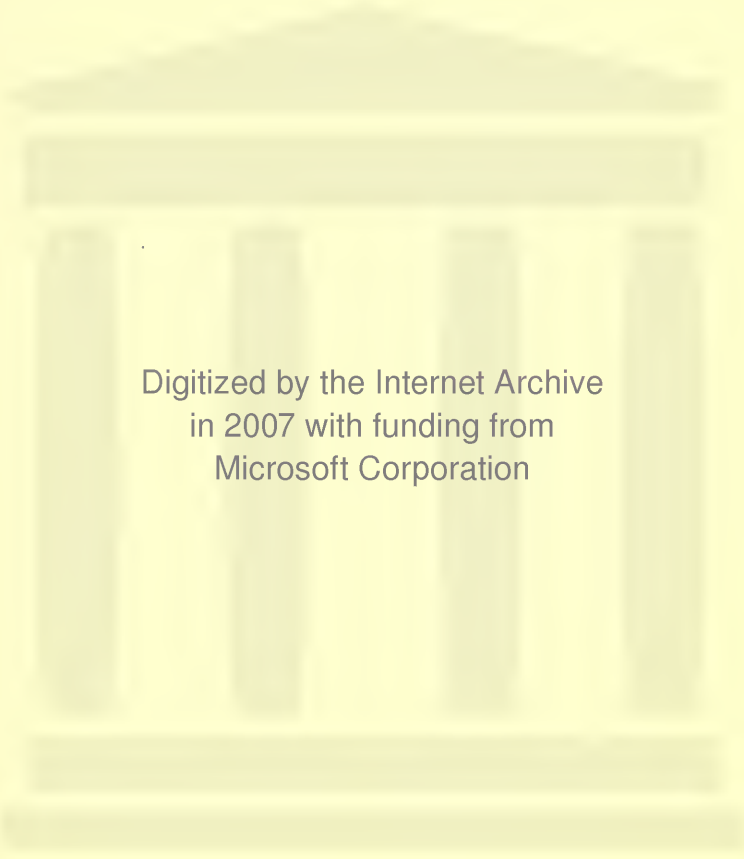
The Great Solution

Magnissima Charta



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ESSAY ON EVOLUTIONARY AND CONSTRUCTIVE PACIFISM

BY

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PREFACE

Five years ago, in 1911, asked to write some lines on what I considered as the last stage to be passed through by the world to reach the era of international security, I drafted a rough sketch of a world charter.[1] Even then others, anxious to help the peoples to evade the dreadful tragedy which they foresaw with a prophetic clearness and in which men, willy nilly, are now taking part, advocated reforms and suggested remedies intended to foil the endeavors of the mystic or selfish vindicators of might. Numerous and various were the propositions made, completing one another and showing the complexity of the problem and its multiple aspects. But they were not combined as a body of doctrine, and this failure perhaps explains their weakness and powerlessness in attacking the most irreducible forces in the world: routine, prejudice, tradition, the threefold and secular armor of those who have lived and are still living to the detriment of human collectivities.

They are now performing their deadly work, those profitsharers of social parasitism. They have cheered, extolled, provoked and led the great war, destined in their opinion to purify the world of all that is utopian and base. And now voices are clamoring, not one of which dares to applaud and glorify them. What these voices are asking for is to see the earth cleared of those wicked beings, nefarious praisers of murder, plunder and

[1] The Existing Elements of a Constitution of the United States of the World, American Association for International Conciliation, No. 47.

arson; and numberless projects and schemes are suggested for at last eliminating war from the surface of the globe, as famine, torture, plague and slavery have been.

Under the ægis of high-minded precursors—Castel de Saint Pierre, Immanuel Kant, William Ladd, Elihu Burritt, Henry Richard, Hodgson Pratt, Randal Cremer, Charles Lemonnier, Frédéric Passy, Bertha von Suttner, Jacques Novikov, Jan de Bloch—modestly I resume their work, but systematically. I am convinced that, out of the horrible distress now over-burdening the peoples, the need for a stable organization of the Society of States will arise in so pressing a form that this problem will have to be faced in all its aspects.

This I have tried to carry out in a concrete and precise form. Whatever may be the title given to the pact by which the States will in future settle their unavoidable relations, the agreement resulting from deliberations to be begun after the war will have an importance at least equal to that which the *Magna Charta* had in securing public order within the States. Would it really be too ambitious to give a similar name to what will necessarily be the *Magnissima Charta* intended to secure public order within the Society of States?

The object I have had in view is to show that the problem can be considered, that a complete and practical solution can be given to it and that it is possible to word a pact in terms as simple as they are juridical. Such a pact, like the constitutions of the various modern States, ought to be written in a tongue which can be easily understood by anybody and which yet expresses clearly all that is essential.

I do not delude myself about the value of the work accomplished. I know better than any one else the numerous verbal difficulties I had to overcome and the multi-

farious modifications the proposed texts had to undergo. If nevertheless I deem it my duty to submit to the criticism of specialists and to the public consideration the project I have drafted, it is not alone to provoke greatly desired observations and corrections, but mainly to point out the aim toward which the efforts of all those, who purpose to give to the world a lasting and if possible definitive peace, should be directed.

Born in distress and in exile, in the midst of the people who, seven centuries ago, was the first to draft for the benefit of mankind a pact of liberty,—written on the open sea, the brotherly highway between the peoples, swung by the waves which no human power can ever enslave or subdue,—completed on the soil of the most cosmopolitan democracy, where government of the people, by the people and for the people is a living reality,—I intrust to my fellowmen this imperfect work of mine, the result of long meditation, an expression of the hopes of those who decline to despair.

Boston, 1915./07./04.
Independence Day.

ACKNOWLEDGMENTS

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THE GREAT SOLUTION

CHAPTER I

General Considerations

1. THE work of rebuilding, which it will be necessary to undertake after the tragic adventure of the greatest war, is not so simple as it would seem at first sight. This was not always perceived by most of the men and women of good will who have met these last months in different countries and have been satisfied, after quick and short deliberations, with adopting a few resolutions, more or less impressive. Such attempts are, however, interesting and promising by their multiplicity and by the sometimes striking similarity of the propositions supported.

But it is not enough to frame wishes and claims. It is necessary to vindicate and particularly to express them in definite terms, if one is willing to exert, on those who shall be intrusted with the task of restoring peace, an innovating and useful influence.

It must not be forgotten that many of those who shall have to fulfill the mission of ending the war and of preventing its renewal will be precisely the men whose interference either contributed to hasten the catastrophe, whose dreadful consequences Europe and the world are now experiencing, or was unable to stop it. It would be a gross mistake to think that the events have deeply modified their minds and that they will be converted into despisers of the past.

It is only under the overwhelming pressure of a universal unanimous public opinion that they will decide to consider other questions than those directly related to the present war. The most perspicacious among them are preparing to support the *status quo ante*. Such a behavior would avoid toilsome and ticklish discussions and make no change in the traditional course of events. Every one, the killed excepted, would go home, provided his home still existed, and the old quarrels, weakened by the sufferings experienced, would be stopped for a time; the acquired positions would be maintained and new wars prepared.

There is no doubt that such a solution—extorted from the weary warriors, from the afflicted mothers and wives, from distress as the adviser of transactions and renouncements—would settle nothing, would plunge the world again into all the previous uncertainties, and give it over to the occult forces which caused all the evils out of whose grip it wants to escape for ever.

2. However, to attain this end, it is necessary that those who are determined to stir the peoples up against war and against the criminals who dream to perpetuate it, not only should know exactly for what they are struggling and what they can claim, but also should adopt similar policies. Now policies which would depart completely from what was previously done in promoting a better organization of the Society of States would be most piteous. What is needed is to compel the States to follow the right road on which they had entered, and not to allow them to cancel the concessions made. What is needed is to stick to the calling of a third Peace Conference as soon as peace preliminaries shall have been signed by the belligerents.

It is known indeed that a third Peace Conference was to have been summoned in 1915 and that its program was

discussed, before the war broke out, by special commissions appointed by various governments.[1] The Interparliamentary Union and the Universal Peace Congress had both considered the question, and it seemed to be agreed that its order of the day would include the framing of the organic statutes of the Peace Conference itself, the definitive constitution of an International Court of Justice and the extension of its competency, regulations respecting aerial navigation, and the codification of international law.

If in our opinion it would be wise to connect the improvements to be brought about in the relations between States with the convocation of the third Peace Conference, it is because all the States, in that case, would of course be invited to take part in the work, and no motive could be alleged for discarding some of the results already attained.

Unfortunately it was argued that the work done at The Hague was to be considered as entirely or partly worthless. There is no doubt that all the dispositions adopted for regulation of the game of war appeared, thanks to the reserve of military necessity, as a vain parade. But this fact was long foreseen by all those who had no interest in veiling the truth and adorning operations on the battlefield with a knightly and humanitarian attire. This illusion has happily and finally vanished and war is now in everybody's eyes the ugly and odious business it has always been. But if the work done at The Hague fortunately failed in this respect, it preserves in its constructive aspect a primordial importance.

3. It is not, however, on this ground that those who

[1] Germany, Austria-Hungary, Belgium, China, Denmark, United States, Italy, Japan, Luxemburg, Norway, Netherlands, Russia, Sweden and Switzerland.

oppose the meeting of a third Peace Conference have for the most part stood. In their opinion new groupings of the States, different from that realized at The Hague in 1907, should be advocated. Some propose the creation of a league formed by Germany, Austria-Hungary, France, Great Britain, Italy, Russia, the United States of America, Japan and the civilized States of Europe.[2] Others would group the neutral States and not wait till the war comes to an end for bringing them together.[3] Others suggest that the American States should take the initiative toward a collective organization to which the other States would be invited to adhere.[4] Yet others think that the neutral States should be ready to rally those belligerent States willing to form a league of mutual guarantee.[5] A last group advocates the creation of an open league of States which would pledge themselves to enforce peace by a collective economic and military coercion.[6]

In our opinion, the idea which ought to dominate is that the aim to be attained by the Society of States is similar to that which, in course of time, each State has realized. The human communities for centuries allowed individual recourse to force for the redress of injuries and injustice: even when courts were organized, such individual recourse was maintained and often regulated. But after some centuries those communities estimated that such a procedure had an unbearable drawback and they compelled their citizens to give up judicial duels and private wars and to appeal exclusively to judges. Between States the recourse to force is at present al-

[2] Bryce's proposition.

[3] Bignami's proposition; World Peace Foundation.

[4] Barrett's proposition (Lake Mohonk Conference).

[5] John B. Clark's proposition (Lake Mohonk Conference).

[6] League to Enforce Peace, founded at Philadelphia, William H. Taft, president.

lowed and is also regulated, although an arbitral jurisdiction exists and is in operation; the problem for the Society of States is to doom this bloody method of settling international disputes and to impose submission to an international judicatory. Now to reach this aim it is essential that all or nearly all the States should rally to the conception of an international public order.

The most secure and simple way is obviously to develop what was done at the Peace Conferences of 1899 and 1907. If the second of these assemblies adopted schemes of an unquestionable boldness, the cause is to be found in the fact that the majority of its members were delegates of States constituted in a democratic form. Such delegates alone will exert the necessary pressure to counteract the influence of those who will represent in the next Conference of States the forces of reaction.

And particularly we should not forget that the States which assembled in 1899 and 1907 are bound by votes and formal declarations. By calling upon them it will be possible to proceed with the work already done and to progress according to the norms of a gradual evolution.[7] This is an advantage which ought to be taken seriously into account and which must have a decisive importance for all those who know the persuasive strength of precedents and established facts. It was by relying largely upon them, as we will show in the following chapters, that we have drafted the articles of our project.

[7] This opinion was already expressed, as far back as 1908 by the Secretary of State of the United States of America in a letter submitting the conventions of 1907 for consideration by the Senate: "The achievements of the [Peace] Conferences justify the belief that the world has entered upon an orderly process through which, step by step, in successive Conferences, each taking the work of its predecessor as its point of departure, there may be continual progress toward making the practice of civilized nations conform to their peaceful professions."

This *orderly process* was interrupted by the present war; it can not be stopped by it.

4. It is now necessary to give some explanation of the terminology we have adopted. Too often, in schemes for organization of the Society of States, the attempt is made to assimilate this organization to the constitutional organization of most States and use has been made of such expressions as *World Confederation, International Federation, United States of the World, World Parliament, International Ministry, World Empire, Universal Republic.* A *World State* will, perhaps, exist after some centuries. What is needed at the present time is to create institutions adapted to a given situation. The adhesion of the various governments can be obtained only to conventional institutions of a direct practical character; it is of little value to adorn them with names which can only give rise to distressing opposition, useless misunderstandings or vain hopes. The natural and logical growth of these institutions will reveal their defects and bring about the necessary modifications and changes. What matters most is to establish agencies which can easily adapt themselves to circumstances and contribute to their own improvement.

We have also cast aside the often-used word *Powers.* This term alludes too directly to force and seems to vindicate the theories of those who value a community in proportion to the strength of its military organization. This is a fallacy which ought to be removed from international thought. Nobody cares nowadays for the number of soldiers in the armies of Babylonia, India, Egypt, Greece, Rome, Italy of the fourteenth and fifteenth centuries, Great Britain in Elizabethan times, France in 1789. Those countries remain in the memory of men for the splendor of their higher civilization, for the progress they started in arts and sciences. In international law the technical and acknowledged term is *State,* and we have used it persistently throughout our work; we hope

that all jurists will adopt this opinion and will aid, as many of them have already, in making this word prevail in the future.[8]

5. We think it advisable to give here some information about the subdivisions of the pact which we will analyze in detail in the following chapters. A summary of those subdivisions is as follows:

Preamble

Preliminary Title

RIGHTS AND DUTIES OF THE STATES.

First Title

CONFERENCE OF STATES.

Second Title

JUDICIARY ORGANIZATION.

Third Title

INTERNATIONAL ADMINISTRATION.

Fourth Title

GENERAL AND TRANSITORY PROVISIONS.

Complementary Conventions

We deem a preamble necessary to indicate the conditions under which the representatives of the States will meet after the great war and under the influence of what ideas their deliberations ought to be pursued. It is obvious that the preoccupations which prevailed at the time

[8] In the conventions adopted at The Hague the use of the word Powers prevailed. Nevertheless in a great number of articles the word *States* was used, namely in the following conventions:

I. International Disputes, Arts. 3, § 1; 4, 8, §§ 2 and 3, 20, 25, 37.
II. Contract Debts, Art. 1, § 2.
III. Customs of War, Arts. 6, §§ 1 and 3; 8, § 1; 14, 37, 48, 53, 55, 56.
V. Rights and Duties of Neutrals, Art. 16.
VII. Conversion of Merchant Ships, Art. 1.
X. Maritime Red Cross, Arts. 1, 15.
XI. Right of Capture, Arts. 5, 6.

of the two first Peace Conferences in 1899 and 1907 will be profoundly modified. When those two assemblies took place, the delegates tried mainly to regulate and humanize warfare, as if it were possible to humanize what is precisely the awakening in men of their less humane instincts, those of the primitive animal which survives in them, which all civilization has aimed to control and overcome. The childishness of such an attempt is proved forever without possible contest: violated neutralities, open towns bombarded, women and children drowned and maimed, monuments of art destroyed, the use of suffocating and injurious gases, peaceful populations abused and transferred to camps, military extortions out of proportion to the local resources: all that the diplomats strove to prohibit was and is carried out and exceeded, not to speak of the dreadful tools employed by the fighters, which are the cause of the most horrid and hellish torments.

The predominant intention will be to regulate at last the peaceable relations between the peoples. They will demand this with eagerness, and the diplomats will be obliged to yield to their injunction. It will no longer be enough, as in 1899 and 1907, to invoke extenuating circumstances and to regret their powerlessness and the deficiency of the adopted solutions. This we have tried to express as follows:

> Animated by the ineradicable and steadfast purpose to avoid the renewal of the slaughter and dismay which have just staggered the world;
>
> Decided to eliminate all appeal to war from international intercourse;
>
> Anxious to form a more close and perfect union;
>
> Determined to establish the empire of law and to assure the triumph of justice;
>
> Resolved to provide for their common security and to or-

ganize their common defense against all perils whatsoever, which may assail or menace them;

Imbued with a spirit of benevolence, confidence, loyalty and frankness which ought henceforth to preside over their relations;

Convinced that the interest of each of them is to promote the general welfare of the people and to secure mutually their inalienable independence,

The following States have appointed as their plenipotentiaries . . . who, after having communicated their full powers, found to be in good and due form, have agreed upon the following provisions:

It will be noticed that, in the last paragraph, we have modified the traditional form of international conventions by which the chiefs of the States, and not the States themselves, are the parties to such acts.[9] This fiction, which allowed an emperor, a king or the president of a republic to supersede, in the treaties, the communities of whom they are only the first magistrates, ought to be dropped. Louis XIV could say: "L'Etat, c'est moi!" Those times are past; the peoples are governing now. Plenipotentiaries no longer represent the chiefs of the States; they represent the peoples and it matters highly that they should declare it when they negotiate in behalf of the peoples.

Next to the preamble comes a preliminary title containing the principles and rules on which the rights and duties of the States are based. In drafting those principles and rules, whose legitimacy, as we will establish, has been implicitly or expressly acknowledged, we have tried to set up a body of doctrine to serve in the future as a guide in the relations of the States with each other. All

[9] It is interesting to note that in the *Final Act* of both Peace Conferences the States were referred to directly, while each of the conventions was worded in the traditional form.

international conventions agreed upon in the future ought to be inspired by them; no State should dare to violate their injunctions. It will be necessary for them, in drafting the complementary conventions, to have this very seriously in mind and therefore a special transitory provision (Art. 70) prescribes that the principles and rules, whose application it is their object to insure, shall be embodied in these conventions.

The preliminary title is followed by three titles devoted to the essential agencies of the Society of States. It will be noticed that, for these agencies, no completely new institutions are suggested. They are all a consolidation, a co-ordination or a development of institutions already realized or projected. We have been particularly anxious not to be influenced by analogies or similitudes. If there exist some likeness between the organization of a city, a province, or a State, each of these has its own characteristics and it cannot be said that they were copied one from another. Therefore it is necessary to warn those who try to draw plans of organization for the Society of States not to be deluded by hazardous attempts to assimilate one organism to another. The elements of a world organization exist: it is wise to maintain them and to be satisfied if we can transform them and adapt them to the new conditions in which the national communities are at present placed. This preoccupation was ours and we think therefore that the project of convention we have prepared is the nearest to the actual state of things and the possibilities of to-morrow.

We think we can stop here our general observations about the plan we have followed. The explanations given in the following chapters will furnish to the reader the opportunity of judging whether we have remained faithful to the ideas which have inspired us during our toilsome enterprise.

CHAPTER II

Rights and Duties of States

1. AS we have just explained, the preliminary title of our project is devoted to the rights and duties of the States: perhaps it might have been more accurate to say "the duties and rights of the States," for the three first articles in fact expound what we consider to be the main and essential duties of States: the duty to contribute to the general welfare of the world, the duty to put international solidarity into practice, the duty to respect the rights of other States. They could be summarized in this one precept: each State shall act toward others as it desires others to act toward itself. It can be said that ignorance, forgetfulness or disregard of this precept, in the relations between States, is the fundamental cause of all international misdeeds and crimes. It is therefore of the greatest importance that, if not the precept itself, at least its most direct consequences should be placed at the beginning of the new pact to be agreed upon by the States. As will be seen, the representatives of the States, perhaps without grasping the full importance of what they did, have acknowledged this altruistic conception of intercourse between States.

2. Up to a recent period, the politics of the principal States was inspired by ideas of competition and struggle and their governments contrived to enrich their own countrymen at the expense of the countrymen of other lands. Mankind was regarded by them as subdivided

into numerous groups, doomed to fight one another in order to conquer a better living and, in order to survive, condemned to cause the ruin and the destruction of their supposed competitors.

For a long time, however, some thinkers have got rid of such conceptions, perhaps defensible when men, in order to subsist, were obliged to be satisfied with the natural products of the soil. It is proved now that the earth can feed with lavishness a much larger population than now exists, and that exchanges of goods are all the more profitable to peoples as the prosperity of each of them increases. No doubt this conviction inspired those who, at the time the second Peace Conference was ending its work, tried by a solemn declaration to escape the deserved reproach that they had been unable, despite the long discussions which took place in 1899 and 1907, to establish even partly obligatory arbitration. This declaration, unanimously approved, asserts: "The powers of the whole world, through their united labors during the past four months, have not only learned to understand one another and to draw closer together, but have succeeded in the course of their long collaboration in evolving a lofty conception of the common welfare of humanity." [1]

[1] A similar declaration was made previously in the course of the first Peace Conference. In the opening address given by M. de Staal, we read: "Now, what do the facts show us. We observe between the nations a community of material and moral interests which is constantly growing. The ties which unite all parts of the great human family become tighter. Even if it would, a nation could not remain isolated; it is seized as in a living gearing, fertile in benefits for all; it forms part of a single organism. Undoubtedly rivalries exist, but does it not seem that they now relate rather to the economic realm, the realm of great commercial expansions born of a similar need for spreading abroad the surplus activity which does not find sufficient employment in the mother country. Such a rivalry, so understood, can be beneficial, provided that the idea of justice and the lofty feeling of human brotherhood soar above it."

M. Léon Bourgeois expressed himself as follows: "The aim of civilization

Whatever was the real thought of those who indorsed this declaration, it declares nevertheless that the selfish tendencies of the States have to yield to the common welfare of the whole number of States. It passed condemnation in advance on the *sacred selfishness* upon which certain politicians thought they had the right to call; it acknowledges the existence of superior interests which all governments are compelled to respect.

The second Peace Conference did not enumerate those interests, but it is not difficult to find them out; they are those of every constituted commonwealth: security, liberty, justice, equality before the law, guaranty and respect of rights and contracts. For their acquisition men have struggled within human communities. To insure them to each of these communities within the Society of States, the governments must expend their best efforts or else see the peoples rise against them.

We deem it necessary to assert, in the first article of our project, the principle included in the declaration we have reprinted above and which the States cannot refuse to reassert without recanting and wofully contradicting themselves. Such a principle ought to be placed at the beginning of the pact organizing the Society of States, not only because it involves the ruling idea which should henceforth inspire all the debates of the representatives of the States, but because it will be the link between the work they accomplished in 1899 and 1907 and the new work they will have to perform.

1. States have for their essential mission not only the promotion of the wellbeing of their own citizens, but also the furtherance of the common welfare of humanity. They pledge themselves to combine and co-ordinate their efforts to attain this end.

seems to us to place more and more above the struggle for life between men their mutual agreement to struggle against the cruel servitudes of matter."

3. The second article we suggest is drafted as follows:

> **2. The States are united in fellowship. They must aid one another and are under the obligation to guarantee their mutual security.**

This provision implies a second principle, the principle of human unity; the States are bound in fellowship because they are the constituent parts of one humanity. The representatives of the States, in the preamble of the Convention for the Pacific Settlement of International Disputes, in 1899 and 1907, have, in proper terms, recognized "the solidarity uniting the members of the society of civilized nations." [2]

This solidarity is especially conspicuous now that the great war is going on. Its economic repercussions have reached the peoples farthest away from the seat of the struggle. Some of their industries are experiencing a grave crisis; others on the contrary enjoy an unheard of, but transient and precarious, prosperity; the situation as to merchant shipping is completely overturned; the credit of certain neutral countries is submitted to the severest trials, and that of the belligerent nations is threatened with a complete collapse; emigration to the new countries is virtually suppressed. As for the more

[2] Prince von Bismarck, when the African Conference met at Berlin the 15th November, 1886, in his presidential speech, alluded to it in expressing his opinion that it was necessary "to apply to Africa, in a form adapted to that continent, the same rule [as was applied to the countries of eastern Asia] based on the equality of rights and *the solidarity of the interests* of all the trading nations."

M. de Nelidov, in his address at the closing session of the Peace Conference of 1907, made a similar declaration: "Nobody would deny that one of the main guaranties for the maintenance of pacific intercourse between the peoples is the more intimate knowledge of their mutual interests and needs, the establishment of numerous and various relations, whose network, every day more extended, ends by creating between them a *moral and material solidarity,* more and more opposed to all warlike enterprise."

remote consequences, such as the derangement of the financial markets, the slackening and stagnation of productive labor in the belligerent countries and the reaction of these conditions on the economic situation of the neutral countries, the diminution and deterioration of the working classes, the monopoly of commercial markets by neutral business, who can estimate their extent? The whole world's economic structure will be shaken to its foundations.

That such disturbances ought to be avoided and that one of the primary duties of the States should be to guarantee to all the mutual security of their relations and transactions, no one would dare to contest, except the few privileged persons who shall have picked up fortunes in the mud of the trenches and the blood of the killed and wounded.

But solidarity is felt in the case of other calamities than those of war; no people can enjoy the misfortune of other peoples and instinctively they are impelled to relieve not only the victims of war, but also populations decimated by earthquakes, epidemics, fires or floods. And it is to be foreseen that an international organization of mutual aid will be created by the States to perform, more completely, regularly and equitably, their collective duty of solidarity. For the fratricidal principle of struggle for life ought to be substituted, in the relations between States as between individuals, the principle of joint action for life.

4. If the States are united in fellowship and have to guarantee their mutual security, they cannot do harm to one another, for they would thus be the cause of their mutual insecurity. However obvious such a conclusion may be, it seems useful to express it in formal terms:

3. In the exercise of their rights, States cannot do injury to the rights of other States.

This rule which is at the basis of the relations between individuals ought to regulate the relations of the groups of individuals which constitute States. Groups of individuals cannot exercise their accumulated rights otherwise than they would exercise them separately, for then it would be necessary to admit that men are allowed as peoples to do the very wrong which, as individuals, they are prohibited from doing.

One of the most direct consequences of the rule here affirmed is that there exists no right of conquest. This supposed right, which in the past was the cause of the most crying injustices and of the most horrid crimes, has been profoundly mitigated; it tends more and more, despite the inexpressible abuses to which it has given rise even in the course of this century, to have only a political import; but, even so reduced, it is nevertheless an unbearable injury to one of the most sacred rights of the peoples, namely, to dispose freely of themselves.

5. Those who are familiar with writings on international law know the innumerable definitions given of the sovereignty, autonomy and independence of States. Many writers have tried to distinguish between these terms but have only obscured the idea here considered. We deem that all definition in this matter is hazardous and useless. In fact these terms affirm the right of human communities constituted as States to enjoy the liberty which men enjoy within those communities. This individual liberty is only limited by the liberty of the other individuals living in the same community. Within the community of the States it is even so. Now, if within each community, the State, in the name of the individuals

composing it, has the duty of insuring and guaranteeing their liberty, within the Society of States this duty is the same.[3] We have drafted this obligation as follows:

> **4. The sovereignty, autonomy and independence of States are placed under their collective safeguard. They can be restricted only to the extent that each State freely agrees thereto.**

The restriction of the liberty enjoyed by individuals within a State is the result of their assent, directly expressed by them or indirectly given by their representatives. The restriction of the sovereignty, autonomy and independence of the States ought to be similarly assented to. The only difference, and it is obviously an important one, is that within the States the consent of a majority limits the liberty of the minority as it limits its own, while consenting States, however numerous they are, cannot restrict the sovereignty, autonomy and independence of the dissenting States.

Nevertheless all the States yield, in fact, to the limitations which are likely to be beneficial to their citizens. This was specifically the case for the rules which govern the vast agencies of transportation: post, telegraph, tele-

[3] It is interesting to note that the principle here advocated is in fact an application to the whole world of the Monroe Doctrine. To show how exact this affirmation is, we reproduce in proper terms the main part of the declaration made in 1823 by President James Monroe, leaving out one word only, placed here between brackets: "But with the governments, who have declared their independence and maintained it, and whose independence we have on great consideration and on just principles acknowledged, we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny, by any [European] power, in any other light than as the manifestation of an unfriendly disposition toward the United States."

It is obvious that such a declaration could be made by each of the States signatory of the Magnissima Charta. But we are of opinion that it should be made by all the States at once.

phone, maritime navigation, railroads, automobile. The same thing happened in respect to maritime law, commercial drafts and checks, patents, trade-marks, copyright, international private law. If some States neglect to adhere to the existing conventions but apply their provisions, if other States leave to the contracting States the burden of some institutions of world-wide interest, universal public opinion will soon blame them therefor and compel them to collaborate in these collective endeavors. The provision relating to the elaboration of an International Budget (Art. 62) takes into account the necessity of such a universal collaboration.

6. It can be said without fearing contradiction that the principle of nationalities dominated the whole history of the last century and of the beginning of the present one. The deliverance of Greece, the constitution of Belgium, the resurrection of Italy, the unification of Germany, the liberation of Rumania, Bulgaria, Serbia, Montenegro were all realized in behalf of the right of the peoples to dispose freely of themselves. This right is the essential element of sovereignty, autonomy and independence. It presided over the formation of the United States of America and of the republics of Latin America, it gave an autonomous government to the Dominion of Canada, to South Africa, Australia, New Zealand. The injuries done to this right have largely given to the greatest war its tragic character, for it is precisely Germany, Austria-Hungary, and Turkey that keep under their yokes the larger number of peoples anxious to live their own life or to resume a common life with peoples from which they are separated. Poland, Bohemia, Finland, Schleswig, Alsace-Lorraine, Bosnia, Herzegovina, Trentino, Triest, Croatia, Transylvania, Armenia, are so

many enslaved peoples who ask for a liberty already imparted to other peoples.[4]

At the next Conference of States, 27 out of 46 will be able to be represented only by the fact that the principle here proclaimed was applied in their favor; and among the States, which did not have to lay claim to it, eight at least—France, Great Britain, Netherlands, Denmark, Sweden, Norway, Luxemburg and Portugal—will display tendencies about which no doubt is conceivable. Their adhesion to the provision, embodied in the following article, is assured in advance:

> **5. The peoples have the inalienable and imprescriptible right to dispose freely of themselves. No annexations or transfers of territories can take place without the consent of their populations.**

7. There are, however, transitory situations for which certain exceptions can be admitted to the rigid application of the principle formulated above. There still exist peoples which are in a state of minority or of relative incapacity, due to involuntary circumstances.

They are the backward peoples, the peoples who lack education and initiation to world civilization. Toward them the Society of States has a duty of collective guardianship, and the States which have the charge of this guardianship ought to be considered as responsible

[4] When the Berlin Congress met in 1878, Prince Gortchakov, in behalf of the request introduced by Greece to participate in the debates which could interest Greek populations, uttered the following observations: "As to the territories occupied by various races and of interest to the Hellenic race which is to be protected, it seems that they cannot be fixed by a principle more rational, more equitable and more practical than that of the majority of the population. This principle results from the provisions adopted by the Conference of Constantinople and laid down by the Preliminary Treaty of San Stefano."

proxies for the human community. This notion may seem a new one, but it is implicitly included in the provisions of the General Act of the African Conference of the 26th February, 1885.[5]

But there are obviously many degrees of incapacity in such groups of population and some of them could, in suitable measure, take part in the administration of their own interests; it would even be useful, in order to further their development and education, to associate them, whatever the state of their civilization, in the management of their communities. It will be necessary to determine by a special agreement the conditions under which these diversified guardianships should be established and successively modified in order to lead the backward populations of the globe from a state of minority, by the stages of a progressive emancipation, to a full autonomy.

We have tried in two separate articles to fix the principles which ought to prevail in these matters and to define the situation of each of the States which has assumed the task of preparing the minor populations to collaborate on their part for the common welfare of humanity.

6. The minor populations are placed under the collective protection of the States. The territories which they inhabit are administered in favor of the natives and in order to secure the full moral and material development of the natives.

[5] Prince von Bismarck on this occasion said: "When it summoned this Conference, the Imperial Government was guided by the conviction that all the invited Governments share in the desire to assimilate the natives of Africa to civilization by opening to commerce the interior of that continent, by giving to its inhabitants the means of educating themselves, by encouraging missions and enterprises spreading useful knowledge and by preparing the suppression of slavery, especially of the slave trade, whose gradual abolition was proclaimed by the Congress of Vienna in 1815 as a sacred duty of all the Powers."

7. The colonies properly so called and the protectorates are presumed to have been established with the consent of the States, and their administration constitutes a collective delegation given to their respective metropoles.

8. Two States, Switzerland and Belgium, have given to the question of the rights of populations in polyethnic countries a practical solution which should be applied elsewhere. The populations which are unable (on account of their small density or of their dispersion among populations of various nationalities) or which do not wish to form an independent State ought nevertheless to enjoy essential liberties, namely, of being their own rulers within the limits of the localities they inhabit, of speaking their own language and of practicing their own religion.[6]

It is needless to insist at length on the moral and ma-

[6] The treaty of Berlin of 1878 contains no less than five articles (5, 27, 35, 44 and 62), relating to religious liberty in Bulgaria, Montenegro, Serbia, Rumania and the Ottoman Empire and framed in the following similar terms: "The difference of religious creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, the admission to public employment, functions and honors, or the exercise of the various professions and industries . . . The freedom and outward exercise of all forms of worship are assured to all the citizens of —— as well as to foreigners, and no hindrance shall be offered either to the hierarchical organization of the different communions or to their relations with their spiritual chiefs."

In the General Act of the African Conference of 1885, article 6, section 3, was also devoted to this question: "Liberty of conscience and religious toleration are expressly guaranteed to the natives as to nationals and foreigners. The free and public exercise of all forms of worship, the right to erect religious edifices and to organize missions belonging to all forms of worship shall not be subjected to any restriction nor hindrance."

As for the right of the populations to take part in the local administration, application of this right to the Ottoman Empire was made in article 23 of the Treaty of Berlin of 1878, where it is said that "laws adapted to local requirements shall also be introduced into the other parts of European Turkey for which no special organization has been provided in the present treaty," and that "the Sublime Porte shall depute special Commissions, *in*

terial tortures inflicted on certain populations by governments which claim to be civilized; such populations must have the means to appeal against the injustices which they would have to bear and a formal statute ought to be granted to them. It will be the aim of a complementary convention to determine how such a guaranty will be rendered effective. But it is nevertheless necessary that the principle should be proclaimed in a positive form, as in the following article:

8. In polyethnic States the right of the minorities to take part in the administration of the localities they inhabit, to practice their religion and to use their national language is formally guaranteed.

9. The States have not only the duty of establishing international guardianships; they have also the duty of placing under an international trusteeship States which infringe morals, equity and right. The States have already and repeatedly taken such measures, especially in order to safeguard the pecuniary interests of their citizens. The international management of the finances of Greece, Turkey and Egypt furnishes well-known examples. The principle of a concerted supervision was consecrated, if not applied, in the case of Armenia.[7] The situation in which Mexico has just been placed justified

which the native element shall be largely represented, to settle the details of the new laws in each province."

Germany, Austria-Hungary, France, Great Britain, Russia and Turkey have ratified both conventions. Belgium, Denmark, Spain, United States of America, Italy, Netherlands, Portugal, Sweden and Norway have also ratified the second.

[7] Article 61 of the Treaty of Berlin of 26th June, 1878, stipulates: "The Sublime Porte undertakes to carry out, without further delay, the improvements and reforms demanded by local requirements in the provinces inhabited by the Armenians, and to guarantee their security against the Circassians and Kurds. It will periodically make known the steps taken to this effect, to the Powers who will supervise their application."

collective action, and the United States of America took the initiative toward such an action along with Argentina, Brazil and Chile and three other Latin-American States. It is obvious that we do not consider as legitimate the numerous interventions which, under various pretenses, took place during the centuries and even during these last years and which, humanitarian in appearance, concealed the most sordid preoccupations. We think that the articles devoted to this question are self-explanatory:

9. States have the right to protest separately or collectively against acts done by one of them, infringing morals, equity and right, and to suggest or take measures deemed useful to put an end to these acts.

10. The States have the special right of accrediting collectively a Council of Management near the State which causes prejudice to the citizens of other States by defective administration of its finances, which permits or organizes the slaughter of its own citizens, or which, by its incapacity to maintain order, endangers the lives and legitimate property of foreigners.

10. After having established the principles which ought to determine how populations scattered all over the earth should be managed, it remains to determine what use these populations, grouped in States, may make of the globe, continents and seas.

The terrestrial globe constitutes a vast reservoir of the products intended to supply the wants of men, and this reservoir can be considered as inexhaustible, if exception is made of some scarce and little consumed products. It is by the exchange of products without hindrance and the most complete freedom of circulation that the satisfaction of the needs of men can be best realized.

If no barriers existed between the countries, they would form so many provinces of a large republic and their citizens, manufacturers and consumers would be submitted to no dearth.

Consequently it is most important that the States should put an end to all monopolies and privileges, if really, as they unanimously declared in 1907, they have acquired a lofty conception of the common welfare of humanity. The Society of States should declare and promote all measures capable of procuring to all men the possibility of purchasing all the products they need and the right to work them up for the greatest advantage of all humanity. This is what we have tried to express in the following text:

> **11. The exploitation of the globe is managed by the States in the collective interest of men, and so as to facilitate and develop to the utmost the exchange of raw materials and of manufactured products.**

Of course the Society of States could decide on the creation by itself of international official services for the working, manufacturing and circulation of certain products, such as arms and munitions, for the extraction of rare ores (radium, palladium, platinum), for the supplying of ships with coal and oil. The States will have to consider whether the collective interest of men demands the creation of such services or whether it is better to intrust their organization and direction to private initiative.

11. Connected with the problem of the best management of the globe is the question, so disputed in the past, of the freedom of the seas; in fact it has been settled long since and it seems almost needless to proclaim it anew in a formal text. But maritime navigation has increased

so much and will grow to such proportions in the near future that it seems useful that the States should pledge themselves to enforce the observance of precise rules by the sailors and to defray the cost of a collective policing of the seas. Indeed this is already the case and the conventions of Washington (1889.12.31) and London (1914.01.20) have to a large extent regulated maritime navigation.

12. The sea is free and open without hindrance to the navigation of all peoples. It is placed under the collective supervision of the States which assume the charge of guaranteeing at a common expense the security of passenger and freight traffic and of looking after the observance by marines of uniform regulations.

The discussion entered upon recently about the freedom of the seas has for its main subject the right of neutrals to trade freely with belligerents and the interdiction to be imposed upon the latter of fighting any naval battle in neutral territorial waters. These are pious wishes. The great war has shown once more that hostilities cannot be either regulated or humanized. Military necessity vindicates all crimes and attempts; war in fact transforms peoples into criminals, and the Society of States must consider them as such and act accordingly, but this question will be discussed later. The problem of the freedom of the seas here contemplated has nothing to do with the situation growing out of a state of war; it concerns only the peaceful relations between States.

But this problem is not the only one to be faced; the problem of the free access to rivers and maritime canals is at least equally important. We think therefore that it is necessary to enlarge the provision concerning the freedom of the seas and to extend it to all waterways. It is known that the international rivers, those which

cross or border the territories of several States, and the interoceanic canals of Suez and Panama are placed under special conventional regulations. In our opinion all waterways uniting or flowing into seas should be accessible to ships of all nations without discrimination, subject only to the condition of paying the same taxes for appropriation and maintenance.[8]

13. All waterways of whatever kind, accessible to seagoing vessels, are open without exception to the free navigation of all the peoples.

12. The most obnoxious impediment, however, to the free circulation of raw and wrought products, and consequently of men, is the gathering of prohibitive and protective taxes. The customs, more than distances, mountains and oceans, have kept the peoples aloof and given birth to feelings of hatred and anger between the States. It is chiefly the colonial customs system which has been the cause of the most vivid recriminations and which has incited all the industrial and exporting States to rush

[8] In fact such a provision would be a generalization of what is already applied to some waterways. Prince von Bismarck in 1885, in the course of the Berlin Conference, declared that "the German Government would be willing to acquiesce in a proposition tending to settle *the question of freedom of navigation on all the rivers* of Africa."

It should be noticed that this rule is now applied to all the waterways which, besides the Congo, reach the littoral included in the Conventional Basin: "All flags, without distinction of nationality, shall have free access to all the littoral of the territories above enumerated, *to the rivers which there empty into the sea,* to all the waters of the Congo and its affluents including the lakes, to all the ports situated upon the borders of these waters, *as well as to all the canals* which may in the future be excavated with the object of connecting together the water courses or lakes comprised in the whole extent of the territories described in Article 1. They may undertake every kind of transport and exercise the coastwise navigation by sea and river as also small boat transportation upon the same footing as the allegiants."

upon Africa with a wild eagerness.[9] To meet the complaints made, various measures were proposed, particularly the internationalization of the colonies; but we think that it would be sufficient to grant to the citizens of all States and to their products a free access to all colonies.

If colonial administrations require that they should be allowed to raise duties in order to run the public services, no one would oppose, on condition that such duties were applied to all goods imported or exported, without discrimination between those belonging to the citizens of the metropolis and to the citizens of other States.[10]

14. The territories of all colonies shall be open, without differential treatment, to the commerce of all nations. The only taxes to be paid shall be raised to compensate expenses useful to the traffic.

It is obvious that a true appeasement, from an economic point of view, will only become possible on the day when the principle of free trade shall be universally adopted. What the Zollverein did to unite Germany, without serious injury to the citizens of the former customs subdivisions of that country, an International

[9] The African Conference of Berlin in 1885 opened the Conventional Basin of the Congo and its tributaries (72,000 square leagues or 650,000 square miles) to the commerce of the whole world. Prince von Bismarck declared on this occasion that, in his opinion, it would be desirable that merchandise intended for the interior should be free of transit dues along the whole littoral of Africa.

[10] This was the rule adopted for the Conventional Basin of the Congo in an article drafted as follows "Merchandise of every origin imported into these territories, under whatever flag it may be, by route of sea or river or land, shall have to discharge no other taxes than those which may be collected as an equitable compensation for expenses useful to commerce and which, under this head, must be equally borne by the allegiants and by strangers of every nationality. All differential treatment is prohibited in respect to ships as well as merchandise."

Customs Union would do for the Society of States. Among all the questions which will be discussed when the war is over none will have so great and decisive an importance. We are of opinion, therefore, that the States should pledge themselves to enter on this course. An article, drafted in the following terms, would respond to this desire:

> **15. Custom duties can have only a fiscal and transitory character. The States will endeavor to set up a customs union, preparatory to the adoption of free trade.**

13. After having set down the principles which should prevail in regard to peoples and things, it is necessary to establish those which ought to regulate relations between the States as such. Are those right who maintain that necessity and force alone preside over these relations and that all the homage done to the law, by those who direct the destinies of the States, is only a dilatory and hypocritical means, intended to gain time till the hour is propitious for victories with the mailed fist?

To these allegations, which have poisoned the international life of the peoples, should be opposed principles of order and justice. It is untrue that necessity knows no law, it is untrue that might is right, it is still more untrue that might creates right. Recourse to force has, in the course of history, generated recourse to force. Sometimes force was a defender of right, of disregarded and oppressed right, but right has always at last overpowered force.

Force has been eliminated from the relations between individuals; inside the civilized States, force is the hand maiden of right and its action is preventive and reparative. What force is between individuals, it ought to become between the groups of individuals which form

the States. It is inconceivable that human communities could possess the odious privilege of committing, in magnified proportions, crimes which are forbidden under the severest penalties to the men who compose these communities, crimes for whose repression they give one another a mutual aid. A crime remains a crime, whether committed by one man or by a mob. From the criminal humanity which survives in us as a legacy from the ages of bestiality and brutality, we appeal to a humanity delivered from atavisms and legends. For centuries the tragic drama of the conflict between our instincts and our ideals has gone on. Slowly men have adapted themselves to the conditions of a more brotherly life, and love for the neighbor has superseded hatred of the foreigner. The use of the fist was superseded by the use of the contract, and the use of the solemn contract, surrounded by objurgations and threats, by a simple plighted word. To strict right equity was added, to equity morality, the accepted duty to compulsory duty. And some would ignore and deny such an evolution and limit it by the frontiers of the States. States are indeed communicating vessels; by river, by highway, by railroad, by the air and by the sea, by the unseen vibrations of the ether they react one on another; osmosis is perhaps more an intellectual than a physical phenomenon. All international life is a protest against those who believe that, thanks to languages and customs, there are insuperable barriers between peoples. Countless contracts have been entered into by the States and have been kept, despite allegations to the contrary. The States have in fact acknowledged the rule of right, equity and morals, and even those that have disregarded their injunctions appeal to them to justify their misbehavior. How could they decline, without falling to the level of bandits or pirates, to assent to the following article?

16. Relations between the States are controlled by the same principles of right, equity and morals as those which control relations between individuals.

14. The right which rules the peoples is mainly a conventional right. This right ought in the future to be rigorously respected. Many indeed consider treaties as "the temporary expression of fortuitous and transitory relations between the various national forces." They infer from this opinion that the respect due to treaties is measured by the force at their command to back their violation. To these bold affirmations, hardly admissible on the lips of a Tamerlane or a Napoleon, ought to be opposed the principle that freely accepted contracts constitute law between parties, who can only depart from it by a common agreement. Respect for treaties is sacred.

This was solemnly acknowledged when the treaty of London of the 13th March, 1871, was signed after the denunciation by Russia of Articles 11, 13 and 14 of the treaty of Paris of 30th March, 1856. In one of the protocols one can read: "The plenipotentiaries of North Germany, Austria-Hungary, Great Britain, Italy, Russia and Turkey, assembled to-day in conference, acknowledge as an essential principle of international law that no power can free itself from the obligations of a treaty without the assent of the contracting parties obtained by a friendly agreement." This is called the compulsory force of treaties which we have formulated as follows:

17. Conventions freely concluded between States are binding upon them as long as they are in force. They may be broken, except through an express clause to the contrary, only by the consent of all the signatories.

It is objected to the strict application of this principle

that some treaties, and especially most of the treaties of peace, were imposed on one of the parties at least, and consequently are essentially void on account of not having been freely agreed. This objection, in our opinion, is fully justified and we cannot adhere to the adage: *Coactus voluit, voluit tamen.*

But we think that the voidness of such a treaty ought to be established by judicial methods and that recourse ought to be open to the injured party. We are also of opinion that there should be a similar recourse against every treaty whose clauses, in consequence of new circumstances, became burdensome or frustatory to one of the contracting States. The recourse to war can no longer be vindicated when an international judicatory, sufficiently adaptable and impartial, guarantees to all the States the consecration of their right.

15. While there existed neither a judiciary nor a conciliatory organization, the States tried to solve this difficulty by stipulating reserves destructive of all obligation. So it happened that, among the provisions which became usual in the main conventions agreed upon at The Hague in 1899 and 1907, several subordinate the observance of the proclaimed rules to the unilateral will of the obligated State. The formulas used, *as far as circumstances allow, as far as possible, unless military exigencies render it impossible, if all other means are impossible, as soon as military exigencies permit*, constitute most evidently potestative conditions which ought in international law, as in private law as applied in nearly all States, to be considered void.

Several times in the course of the debates of the Peace Conferences delegates did remark, from the fact that the interpretation of the said reserves was left to the parties, that the contracting States preserve the right of taking

back with one hand what was given with the other. It is obvious that such a method ought to be condemned by every man of good sense. In international matters more than in individual matters, it is necessary that the obligations agreed upon should be clear and precise and should not depend on the good or bad will of one of the contracting parties. A clause which permits one of the parties to do or not to do at his pleasure must be considered as void. This is the meaning of the following article:

18. Every potestative clause, which permits to any or to each of the contracting States to decide in a sovereign manner whether a convention is partly or completely applicable to a given case, shall be considered as void.

16. The world is henceforth obliged to make a choice between the frank, genuine and open policy of peoples really determined to further their common welfare on the one hand, and the cunning and hypocritical policy of men who have used the peoples to quench their thirst for prestige, glory and wealth on the other. The policy of the cliques ought to make room for the policy of the masses. The peoples ought not only to dispose of themselves and to regulate the internal administration of their communities, but also to make themselves heard in their relations with other peoples. All that is done unknown to them and without their formal agreement must in the future be considered as non-existent. Each State ought to have the right to require that the consent given to a treaty by another State should be expressed by those who are regularly the representatives of the masses in that State and of its public opinion. This is the meaning of the next article:

19. Every secret treaty is void and does not bind the

States in whose names it was concluded. A treaty is valid only if it is negotiated with the full knowledge of the direct representatives of the peoples interested and if it has obtained the public assent of these representatives.

17. Finally, there are conventions and treaties which the States ought formally to pledge themselves never to agree upon, because they are essentially destructive to the Society of States and in flagrant contradiction of the obligation to be taken by the States to combine and coordinate their efforts in favor of the common welfare of humanity: namely, political or military, defensive or offensive alliances.

Events have proved that, far from enforcing peace and promoting justice, they have been the cause of the worst iniquities, have maintained between the peoples a nefarious tension, aroused feelings of hatred and distrust, hindered normal development by compelling the peoples to waste in unproductive expenses gigantic resources which would have improved the conditions of the masses and quickened general progress. The proof is tragic, disastrous, peremptory, irrefutable. The most pessimistic prophecies have been more than realized. The unstable equilibrium of *Triple Alliances* and *Triple Ententes* has broken down in blood and in mud. Who would dare to extol them again and to wish their revival?

20. The States prohibit the conclusion, between two or more of them, of political or military, defensive or offensive alliances.

18. Respect for freely accepted conventions is not the only consequence of the rule that States must yield to right, equity and morals. The most important consequence is that recourse to force, in the relations between the States, ought to make room for the recourse

to justice. We have expressed this consequence as follows:

> 21. **All conflicts between States shall be settled in an amicable or contentious manner.**

The third title of this project is devoted to the International Judicature and specifies its general structure. A special and complementary convention will have for its object the regulation of the constitution of the various judicial organs and the procedure to be applied before them.

Here it concerns us only to proclaim the general rule that there are no conflicts between States which cannot, without recourse to force, be settled amicably or contentiously. This rule constitutes the essential element in the transformation to be brought about in the relations between States. Therefore it seems important to expound some of the objections expressed by those who believe in the perpetuity of war and who, with the professional and instinctive slaughterers, are convinced that armed struggle is the natural state of man.

In the course of both Peace Conferences this conception came forward in connection with the proposition made by the Russian delegation to submit to compulsory arbitration certain categories of conflicts. This proposition contained, however, the potestative reserve of vital interest and national honor, which evidently meant that recourse to arbitration would be compulsory if the States concerned were willing to yield to it. Mr. T. M. C. Asser, the well-known Dutch jurist, with his usual acuteness remarked that this was a new formula. Mr. Zorn, the German delegate, declared that the maintenance of the reserve was the condition *sine qua non* of the adhesion of his government, while Mr. de Martens, the

Russian delegate, in answer to Mr. Asser, admitted that the wording was indeed new, but feared it would be difficult to find a better one.[11]

[11] For those who wish to know how this reserve was introduced and advocated, the following details will be interesting. It was, in fact, included in three articles of the proposition made by the Russian delegation. After having declared in article 7 of this proposition that "in so far as regards disputes relating to questions of right and primarily to those affecting the interpretation or application of treaties in force, arbitration is . . . the most effective and at the same time the most equitable means of settling these disputes in a friendly manner," the proposition contained a first article (8) which incorporated the said reserve in the following terms:

> **The contracting Powers pledge themselves consequently to have recourse to arbitration in all cases concerning questions of the above-mentioned order *in so far as they affect neither the vital interests nor the national honor of the parties in dispute.***

This article was suppressed, without explanation, at the sitting of the *Comité d'Examen* in the course of which the provisions concerning compulsory arbitration were retired in the face of the unilateral opposition of Germany. Among these last provisions was a second article (10) containing the said reserve; its first paragraph was as follows:

> **From the ratification of the present act by all the signatory Powers, arbitration shall be compulsory in the following cases *in so far as they affect neither the interests nor the national honor of the contracting States.***

The third article (14) including a similar reserve had for its subject the International Commission of Inquiry and was drafted as follows:

> **In cases where are produced between the signatory States differences of opinion concerning local circumstances which have given rise to a dispute of an international character which could not be settled by the ordinary diplomatic means, *but in which neither the honor nor the vital interests of these States should be engaged,* the interested governments agree to institute an International Commission of Inquiry in order to ascertain the circumstances which have given rise to the disagreement and to elucidate on the spot, by means of an impartial and conscientious investigation, all questions of fact.**

No opposition was made to the introduction of the reserve in this article; in fact the long discussion about this article turned only on the compulsory or optional character of the International Commissions of Inquiry. However, in the minutes of the sixteenth sitting of the *Comité d'Examen*, one can

In fact nobody then knew and nobody now knows ex-

read: "On a question by the president, M. Descamps answered that the words *vital interest and national honor* exist only in article 9 [the article here dealt with] after having appeared, at first, in several parts of the convention. This expression is consequently 'a witness of former ages,' as the geologists would say."

When the text came before the Third Commission in its eighth sitting, the expression despised as a "witness of former ages" had disappeared, although the minutes of the *Comité d'Examen* contain nothing about it. The reserve was introduced anew by the Rumanian delegation, which opposed most ardently the compulsory character of the International Commissions of Inquiry, and as much in a spirit of bargaining as from weariness the text proposed by this delegation was adopted with the substitution of the word *essential* for *vital.*

A last effort was nevertheless made by the delegate of Serbia, who objected to the introduction of change in the text proposed by the *Comité d'Examen*: "If new provisions are introduced in this article, it will be at the risk of compromising its fundamental idea, namely its optional character. It is indeed to be anticipated that discussions will arise about the question if national honor and vital interests are engaged. In such discussions, the smaller States will be in a state of inferiority as against the great ones. . . . In an international convention, in which all the contracting parties ought to be placed on a footing of equality, situations should not be created by means of vague clauses, which would be the very negation of the principle . . . that there are no great and small, but only independent and equal, powers."

When the second Peace Conference met, the maintenance of the reserve concerning national honor and vital interests and its extension to independence and sovereignty was advocated by the delegates of Belgium, Greece, Switzerland and Turkey, but an enormous majority of the States voted in favor of the suppression of the reserve and in favor of recourse to compulsory arbitration for a certain number of conflicts.

Faithful to this opinion, Denmark, the Netherlands, Argentina, and Italy have signed treaties of permanent arbitration with no reserve at all. Among the 112 treaties of permanent arbitration, whose official texts were published by the Bureau of the Permanent Court of Arbitration, 61 have adopted the wording of the convention of the 14th October, 1903, between France and Great Britain which contains the reserve of honor, independence and vital interests.

By analyzing all the reserves made in these 112 conventions it appears that 102 of them exclude independence, 86 vital interests, 85 national honor, 21 sovereignty, 11 constitutional provisions and 7 national integrity. These statistics reveal that in a number of conventions (26 or 27) the States have not attached any importance at all to their honor and vital interests.

actly the meaning of the terms used, which did not, however, prevent a great number of the governments from putting them as a *clause de style* into their treaties of permanent arbitration. Vague expressions have, in the eyes of diplomats, the enormous advantage of vindicating all interpretations and of allowing the governments to free themselves, by clever subterfuges, from the obligations to which they appear to have pledged themselves.[12]

But to understand thoroughly the inward thought of the men who maintain that States have the absolute and irreducible right to do all that they please, it is important to reprint here some of the theses included in the note distributed in connection with the debates by the Russian delegation, precisely in support of its proposition in favor of compulsory arbitration. Here they are:

> "It is obvious that this [compulsory] arbitration can not be applied to all cases and to all kinds of disputes. No government would agree to take *in advance* the obligation to submit to the decision of an arbitral tribunal every dispute which could arise in the international field, if it affected national honor of the State, its higher interests and its imprescriptible goods.
>
> "Actually the reciprocal rights and obligations of the States are defined, in a large measure, by the whole of what is called the political treaties, *which are nothing else than the temporary expression of the fortuitous*

[12] An incident, almost forgotten, shows how fragile is this national honor on which diplomats are so prone to lay so much stress. During the first conference held at Vienna in 1855, in the course of the Crimean war, the Russian plenipotentiary declared that the honor of his country did not allow him to accept the limitation of the number of warships to be maintained by Russia in the Black Sea. Some months later, by the treaty of Paris of 1856, without any allusion made by them to their honor, the Emperor of all the Russias and the Sultan agreed to reduce their naval forces to some light ships necessary for the coast service.

and transitory relations between various national forces. These treaties confine the liberty of action of the parties, as long as the political conditions under which they were drafted remain unchanged. If these conditions are altered, the rights and obligations flowing from these treaties must be necessarily changed. In general, the disputes arising out of political treaties chiefly concern not so much a difference of interpretation of such or such a norm as the changes to be brought to this norm or its complete repeal.

"The powers which play an active part in European political life can not consequently submit the disputes growing out of political treaties to an arbitral tribunal, in whose eyes the norm established by a treaty would be as obligatory, as inviolable, as is the norm established by positive law in the eyes of any national tribunal. From the point of view of practical politics the impossibility of universal compulsory arbitration is consequently obvious." [13]

[13] In a report prepared by Mr. Goldschmidt, Counsellor to the Supreme Court of the German Empire, and addressed to the Institute of International Law on a project for the regulation of international arbitral tribunals, the author examined the same question and explained his meaning as follows:

"It is nevertheless difficult to suppose that sovereign States and particularly the great Powers will ever consent to yield, in advance and for all possible disputes, to the decisions of an arbitral tribunal. Political disputes of an intricate nature, in which questions of nationality, of equality of rights, of sovereignty constitutes either the main point, or the hidden but real cause of the dispute, these disputes which, by their very nature, are less questions of right than of power, will always be reserved from such a mode of settlement. States in possession of some power of resistance will never bow before a judge when the points in question are their supreme interests or those considered as such. The best meant efforts will necessarily fail against such interests and the passions which they arouse. No arbitral tribunal could have prevented the secular struggles between Great Britain and France about the British claims on French territory, nor the struggles between France and the houses of Austria and Spain for preponderance in

This is a valuable acknowledgment, for it shows that the government of one of the most prominent States in the world, the State which called together the Peace Conference, was not ashamed to declare that the political treaties it had signed were binding it only so far as the forces of the contracting parties were able to compel it, and that consequently it had the right to violate the obligations taken. It is the cynical negation of right. Such a conception is no longer valid. It could have been accepted at a time when the peoples were chessmen which potentates moved at their pleasure. The time of potentates is past and the peoples are tired of princes' games, of which they alone are the victims.

What must be kept in mind from what we have just recalled is that some disputes of a political order can not be easily submitted to arbitrators or to commissioners, though such a difficulty is much exaggerated, for, as Mr. de Martens pointed out during the Peace Conference of 1907, Great Britain and Russia did not hesitate, when the Hull incident occurred, in which both States considered that their vital interests and their national honor were involved, to have recourse to a Commission of Inquiry in order to settle their disagreement.

The truth is that it is possible to use other methods than arbitration, inquiries, tribunals, or mediation to settle disputes of a political rather than a judicial character. From all sides the proposition is made to create an organism to fulfill such a function, namely an International Council of Conciliation, a consolidation and enlargement of what the European Concert has been in

Italy, nor those between the Dutch and the Spaniards, nor the Thirty Years' War, nor the wars between Austria and Italy, between Austria and Prussia, between Germany and France, nor the great American war. Neither Louis XIV nor Napoleon I would ever have agreed to submit to arbitrators their claim to the domination of the world." (*Revue de droit international*, 1874, p. 423.)

some delicate circumstances, a true family council of the States. There is no doubt that, with a little good will, much wisdom and especially the active and energetic pressure of universal public opinion, such an aim can be attained. In the complementary convention subjoined to this project, we have included the proposed International Council of Conciliation among the various modes of amicable jurisdiction.

19. What we have said as a conclusion to our commentary on the preceding article amply justifies the following article. The fact that all disputes ought to be submitted to an amicable or contentious jurisdiction eliminates *ipso facto* any direct and unilateral recourse to an armed compulsion.

22. No State has the right to have recourse to force without the consent and the co-operation of the other States and only as a judicial sanction or coercion.

As the terms used in this article indicate, all recourse to force is not excluded from the relations between States, but such a recourse will be a collective one and may have only the character of a police measure in order to secure submissiveness to international law as freely accepted.

The manner in which such a recourse will be brought into action, the co-operation to be given by each State, the regulations to be applied by those who will have the painful mission of fulfilling such a task, will form the subject of a complementary convention.

20. It was also necessary to foresee the case, which we hope will become more and more unlikely, where a State that refused to sign a pact similar to the one we are analyzing, or even a signatory State, might attack one

of the contracting States. That the State attacked should have the right to defend itself, no one would doubt; but, if it is really wished to oppose all use of force by a warlike State, it must be agreed that all the members of the Society of States are obliged to support the attacked State and to aid it efficaciously. It will perhaps be said that such an agreement is a new application of the old adage that it is the threat of war which makes for peace. But the conception which ascribes the maintenance of peace to the equilibrium of hostile forces is quite different from the conception which enforces peace by a collective police force stronger than any national force. This is expressed by the following article:

> **23. A State which is attacked, outside of the conditions conventionally and collectively established by the States, has a right of legitimate defense. The other States are obliged to participate in this defense and to make it efficacious.**

Humanity indeed is placed before this dilemma: either to see the constitution of an empire powerful enough to impose its will on the world and to curb under its law all the States which it could not enclose in its frontiers, or to try to unite the majority of the States in a league of mutual guaranty able to oppose all attempts at universal domination. The choice does not seem doubtful. In the first hypothesis not only will the dominating State be obliged to arm in order to resist all attempts of liberation by the enslaved peoples and by the States whose submission it has obtained, but these States will arm also to the limits of their resources. In the second hypothesis, the number of States, anxious to escape from crushing burdens, will be great enough to permit a proportional reduction of their armaments; their economic situation will in fact be so improved that the dissenting or hostile States will be compelled, under

pressure from their own citizens, to rally to a policy of good will and partial or complete disarmament.

21. Nevertheless, to indicate clearly the spirit in which the proposed measures are to be applied, we thought it advisable to complete the provision authorizing them by another limiting their use to what is strictly necessary and unavoidable.

24. The States shall not have recourse to force as a means of sanction, coercion or defense before having exhausted all moral, political and economic means of constraint.

At first sight such a provision will seem somewhat theoretical, but we may hope for three profound changes in the world's conception of the moral, political and economic relations between the peoples. First, it is to be hoped that the press of hatred and falsehood, of perfidy and insult will be struck to death by concerted repressive measures. There is no question of restricting the liberty of the press, but it is of the highest importance that similar penal laws should severely punish lies, calumnies and injuries directed against peoples as similar acts are punished when directed against rulers. It is also to be hoped that the governments will take care to redress the false assertions which come through the press, and that an adequate right of reply will be granted to their agents in the various countries. The groups which work everywhere to further a better understanding between the peoples should agree in this respect to keep an uninterrupted and merciless watch.

In the political domain an essential modification is to be made in the recruiting of the diplomatic corps. The mistake of selecting the diplomatic personnel from the small world of the nobility and from men deformed by a one-sided education must be stopped. The system

long since adopted by democratic States, and especially by the United States of America, should be applied by all the States. No organization than the diplomatic body should be more imbued with new, modern and progressive ideas, instead of representing, in a world in continuous and rapid evolution, the most formalist, the most conservative and the most pusillanimous tendencies.

Finally, from the economic point of view, the growth of the policy of free trade, which we have advocated above, will create, between the commercial, industrial and financial interests of the various peoples, a solidarity so interwoven that the least threat of conflict or cessation of relations will be sufficient to rouse them with an impressive unanimity against those who would be willing to trouble the peace of the world. We think that the lesson of the great war, whose terrific economic consequences only begin to be perceived, will not be lost and that to allude to it will be enough to raise universal public opinion against the monstrous supporters of a new similar cataclysm.

It is objected to the idea of giving to a community of States the right to institute military or economic action against one of its members, that no State, and especially no powerful State such as Russia, France, Great Britain or the United States of America, would accept the contingency of being compelled to bow to the collective action of States having a very limited territory or a small population. We are of the opinion that such a behavior, adopted by one or more States, would be heralded as a dishonorable acknowledgment of their intention to act so as to deserve the blame of the other States. Their acquiescence in measures of coercion, sanction or defense would, on the contrary, be considered as a token of their sincerity and loyalty. A State resolved to observe international law, drafted with its collaboration, and to

respect the conventions it has freely signed, has no more to fear from a repressive or coercive action than a private person who remains faithful to his contracts and abstains from all blameworthy acts. The high standing imparted to a State will be proportionate to its participation in all measures intended to secure international order and justice; its abstention or its withdrawal would subject it to universal mistrust, and it would easily become the outcast of the world.

22. The principle of the equality of the States is fundamental in all international relations. It was, however, discussed with some roughness in the course of the last Peace Conference, especially when the question of the selection of the Judges of the Court of Arbitral Justice was discussed. The delegates of a large majority of the States protested unanimously against any infringement of it, and we are of the opinion that the principle of equality ought to be firmly maintained and proclaimed.

It is this principle which was applied to the constitution of the American Senate and of the Swiss Council of States, organizations which have, within both the American and Helvetic confederations, the character of a diplomatic representation.

When once the project is suggested to place beside the Conference of States an International Parliament, it will be time to investigate whether a system of proportional representation ought to prevail in the choice of the members of this new assembly.[14] But it is of the highest importance that the principle of equality, from a diplomatic point of view, should not be weakened at the risk of establishing a hierarchy of States and of disturbing profoundly the relations between their plenipotentiaries.

[14] This problem was investigated by the author as reporter at the Interparliamentary Conference at London in 1906.

We think that the unanimous opinion of the experts in international law in this respect frees us from commenting more at length on the following article:

25. The States are equal, whatever may be the extent of their territory or the importance of their population. Equal respect is assured to the name, flag, seal, blazon and device adopted by each State.

23. It is finally also very important that the rights of men, guaranteed within nearly every State by their fundamental pact, should be acknowledged and protected wherever a man may go on the surface of the earth. In fact, it is so already in most countries, which often welcome foreigners with a marked preference. But there exist some exceptions which ought to disappear at the very moment when there is a question of definitively constituting the human community on bases of understanding, benevolence, regard, conciliation and collaboration. The equality of States ought to have as its complement the equality of men.

The two articles which follow have for their object the fixing of this principle and of enumerating limitatively the conventional restrictions which the States may place upon it:

26. Foreigners enjoy in all States the liberties and rights guaranteed to nationals. The States proclaim that these liberties and rights essentially include individual liberty and security, inviolability of domicile and property, freedom of conscience, freedom of speech, inviolability of correspondence, freedom of association, freedom of religion. Restrictions may be enacted in respect to the enjoyment of certain rights of elective franchise and of eligibility.

27. Neither race, nationality, language, nor religious, philosophical or social convictions may be used as a basis on which to exclude or to expel foreigners.

Nevertheless, the States may agree on regulations to be applied to the abnormal and amoral, the insane, infected patients, professional beggars and vagrants, persons who have been convicted and all other categories of undesirable persons. They will also establish common regulations in matters of change of nationality and may agree upon general measures relating to the annual or absolute number of immigrants admitted on the territory of each State or to their distribution thereupon.

CHAPTER III

Conference of States

1. IN the Final Act of the Peace Conference of 1907 the plenipotentiaries assembled at The Hague inserted the following recommendations:

"Finally, the Conference recommends to the Powers the assembly of a third Peace Conference, which might be held within a period corresponding to that which has elapsed since the preceding agreement between the Powers, and it calls their attention to the necessity of preparing the programme of this third Conference a sufficient time beforehand to insure its deliberations being conducted with the necessary authority and expedition.

"In order to attain this object the Conference considers that it would be very desirable that, some two years before the probable date of the meeting, a preparatory Committee should be charged by the Governments with the task of collecting the various proposals to be submitted to the Conference, of ascertaining what subjects are ripe for international regulation, and of preparing a programme upon which the Governments should decide in sufficient time to allow of careful examination in each country. This Committee should further be intrusted with the task of proposing a system of organization and procedure for the Conference itself."

It results from this text that the idea of perpetuating the Peace Conference and of organizing it was imposed in some way on those who took part in its second session. It was on the proposition of the president, Mr. de Nelidov,

that the above recommendation was made.[1] But in reality it was the American delegation which took the initiative in pursuance of the instructions given by Mr. Elihu Root, Secretary of State, instructions which specifically invited that delegation to "favor the adoption of a resolution by the Conference providing for the holding of further conferences within fixed periods and arranging the machinery by which such conferences may be called, and the terms of the programme may be arranged, without awaiting any new and specific initiative on the part of the Powers, or any one of them." [2]

The project, rather vague and unformed, which seems to have gained the adhesion of the authors of the recommendation made to the States, consists chiefly in the assembly of the Peace Conference every eight years and the intrusting of preparation therefor, two years at least

[1] It is interesting to recall what was said by Mr. de Nelidov on behalf of his motion: "The rather slow and sometimes uncertain process of our proceedings as well as the impossibility, in which the Conference found itself, of solving some of the questions submitted to it and proposed during our deliberations, have suggested to some of our colleagues the idea of considering at present the usefulness of the meeting of a third Conference and the necessity for preparing in advance its detailed programme and its mode of working and organization. An exchange of views, which took place as a consequence of this suggestion, resulted in the drafting of a recommendation to be submitted to our governments as a wish."

[2] In the report made to its government by the American delegation some interesting remarks are to be noticed: "The desire of the friends of progress is to have the Hague Conference a permanent institution, which meets at certain regular periods, automatically if possible, and beyond the control of any one Power. The American delegation was instructed to secure, if possible, this result, and through the efforts of the American delegation this result was reached in large measure." Then, after having exposed the contents of the adopted recommendation, the report adds: "The wisdom of these provisions is so apparent that any justification of them seems unnecessary. The last clause, however, cannot be passed in silence, as its importance is fundamental, for, in simple terms, it means that the Conference is not to be organized nor the method of procedure determined by any single Power. In other words, the Conference, it would seem, is to be given over to itself."

before its meeting, to a special body. In fact fourteen governments, willing to secure this preparation, appointed national commissions, and France, to the same purpose, created a special bureau connected with its Ministry of Foreign Affairs.

We have tried to take these summary indications and realizations into account and to reconcile them with propositions and criticisms made elsewhere.

2. As is set forth by the title of this chapter, we deemed it necessary to change the name given to the assemblies which met at The Hague in 1899 and 1907. As long as these assemblies had, for their essential aim, the finding of means to reduce the burden of armaments and to settle peaceably international conflicts, it seemed reasonable to call them Peace Conferences. But their mission is now to be largely extended; they will have to determine the rules which shall preside in the future over the multifarious relations between States; they will be regularly attended by the delegates of all the States; the institution of an International Judicature will be settled at its next session; the reduction of armaments will be less the goal than a result of the measures taken. And then the Peace Conferences have chiefly devoted their best efforts to the vain and almost trifling work of phrasing laws of war. The title given to them has indeed become too ironical.

All things should be distinguished by names, indicative of what they are; the assembly which ought to meet in the future, in order to control the common interests of the peoples, will essentially be a *Conference of States.*

3. The first and most serious complaint expressed with respect to the late Peace Conferences is that their meeting depended on the good will of one ruler, the Czar of

Russia. When the question arose of the meeting of the second Peace Conference, the initiative was taken by Theodore Roosevelt, at that time President of the United States of America, but the Czar of Russia claimed for himself the right of calling it together, and this right was implicitly acknowledged. Many are of the opinion that, once created, so important an organization ought to have its own life and to fix its sessions as it pleases. Others think that the general interest of humanity requires that the Conference of States should meet periodically and automatically under such conditions that its sessions should not be dependent on the caprice of a prince or of a majority. Most constitutions determine the date when the national parliament meets and we believe that the Society of States must adopt a similar solution.

But what period is to be chosen? We have pointed out that the second Peace Conference considered as convenient a period of eight years. Our opinion is that the Conference of States should have frequent sittings. It is imperative that public attention should be unceasingly fixed upon the common interests of humanity. The problems to be solved are indeed so numerous, as will be shown further on, that biennial sessions will not be too frequent. We deem it even useful to give to the members of the Conference of States the faculty of convoking more frequent sessions.

On the other hand, for similar reasons, it would be necessary that the sessions should be itinerant, and consequently that each Conference of States should decide where its next session would sit. These changes of place would have the supplementary advantage of bringing the delegates of the States successively into close contact with the various populations of the globe, their needs and aspirations.

The following text takes into account the ideas we have summarized above:

28. The delegates of the States meet, once in two years at least, in a Conference whose place of meeting shall be fixed at the last sitting of the previous Conference. In default of such a decision, the session shall take place at The Hague. The Conference will automatically meet, without special convocation, on the eighteenth of May.

The States pledge themselves, when the Conference meets on their territory, to place at its disposal the desired quarters and personnel.

4. After having regulated the meeting of the Conference of States, it is necessary to determine how it shall be made up. We think it needless to depart from the custom followed by a great number of previous diplomatic conferences and which can be called the system of missions. The rule, however, which should be insisted upon is the appointment of the missions by the representative bodies of the various States: it is very important, for the reasons already given, that the delegates should not be exclusively taken from the diplomatic and official classes. This has already been taken into account for the appointment of the technical delegates to the second Peace Conference. Out of the 174 delegates composing this assembly, 55 belonged to the army and navy, 29 were jurists and 19 were parliamentarians.[3] We think also that it is necessary to give to each State the

[3] It is interesting to note that the 26 States represented at the first Peace Conference by 138 delegates, of whom 78 were diplomats, 36 officers, 12 jurists and 12 parliamentarians, were represented at the Second Peace Conference by 131 delegates, of whom 48 were diplomats, 47 officers, 26 jurists and 10 parliamentarians. The proportion of the official elements (diplomats and officers) changed from 82.6% to 72.4% while the non-official elements (jurists and parliamentarians) grew from 17.4% to 27.6%.

faculty to select its mission in its own way. The countries which possess a greater number of specialists than others will not be hindered in their choice and will be able consequently to aid more largely in the solution of the problems which the Conference of States will have to take up. The childish vanity displayed by certain governments in appointing a numerous mission *ad pompam et ostentationem* would only make them ridiculous and injure their own prestige.

No inconvenience resulted from this method of procedure in the course of the two Peace Conferences. The only recommendation to be made is that each delegation should include at least as many members as the Conference of States comprises commissions. It is really in these commissions that the investigation of the questions to be solved is made most carefully, and it is highly important that each State should be able to express its opinion in each commission and at least take part in their votes.

29. Each State is represented at the Conference by a mission composed of an unlimited number of delegates which it shall be allowed to appoint in its own way. It is, however, recommended that the number of delegates should at least be equal to the number of Commissions requisite to the fulfilment of the work of each Conference and that they should be chosen, according to their aptitudes, by the representative bodies of the various States from among the most competent personages of each country.

5. We think it useful to define some details concerning the nature of the mandate given to the various delegates. It is obvious that the technical delegates ought to be distinguished from the principal delegates; they have, indeed, largely a consultative mission and the final decision cannot remain with them. But it is difficult to frame

a rule in this respect; each State will have to give special instructions to its delegates. It is to be noticed that during both Peace Conferences numerous delegations could not express an opinion before having referred to their governments.

A new regulation should be introduced, urging each State, after the appointment of its delegates is made, to give notification, six months at least before each Conference, of the composition of its mission. It is useful that the delegates should know one another in advance and be able, in case of need, to come into mutual contact. When both Peace Conferences took place most of the delegates were unknown to each other and diplomatic prudence obliged them, during long weeks, to have only relations of vain and formal politeness. Some biographical information would certainly be welcomed and the Permanent International Secretaryship, whose creation we advocate, would be the true agency for gathering and publishing it.

30. The missions may include titular, technical and substitute delegates. The States may during the sessions modify the composition of their respective missions. All notifications respecting the appointment of delegates shall be made to the Permanent International Secretaryship and shall be forwarded thereto six months before each Conference. The Permanent International Secretaryship shall prepare a list of the delegates and notify the same to all the States three months before each session.

6. The question of one vote for each State cannot give rise to a controversy. In entering this rule in a special article we only follow a secular practice based on the principle of equality between States. In prescribing by whom the vote shall be expressed, we have abided by an undisputed diplomatic custom.

31. Each State disposes of only one vote. This vote shall be cast in each Commission by the delegate specially appointed to this effect by each mission and in plenary sittings by the chief of the mission or another person appointed by him.

7. The considerable importance to be given to the deliberations of the Conference of States requires that each of its sessions should be surrounded by an exceptional brilliance. It is evidently not a part of an international pact to settle upon the festivities which should enhance the opening of each Conference of States. We are convinced that the peoples will feel instinctively the need of renewing, on the occasion of each session of the high assembly, the promise they will make soon to live henceforth in peace. If, as we hope, the Conference of States will be itinerant, there will arise between the peoples a wholesome competition and they will try to surpass one another in the commemoration of their hearty understanding. It is necessary that, at the moment when the delegates resume their work, they know that universal public opinion surrounds them with its wishes and encouragement.

In the article concerning the opening of each Conference of States, we think that it will be sufficient, in order to indicate its importance, to enumerate the personages who should be officially present.

32. The solemn opening sitting of each Conference shall take place under the presidency of the Chief of the State on whose territory it meets. It shall take place in the presence of the representatives of the authorities of this State and the members of the diplomatic body accredited to it.

The public and the press, either national or foreign, shall be allowed to assist at this ceremony as well as at subsequent plenary sittings.

8. A purely formal article is devoted to the nomination of the Bureau of Officers of each Conference. It reproduces essentially what was done at both Peace Conferences. Concerning one question nevertheless we propose a change: election by acclamation, which is often imposed, should give place to a regular election, if some States (we have fixed their number at six) demand it. We have also inserted a provision tending to have as many States represented in the Bureau of Officers as possible. This was not often the case in most diplomatic assemblies because it was necessary to appoint titulary secretaries knowing the local conditions under which the work was to be performed. But by the fact that a Permanent International Secretaryship will be organized, the execution of the material side of the proceedings will be secured and the titular secretaries will have only the task of directing and controlling the work. The Bureau may therefore be rendered as representative as possible without disadvantage.

33. At the time of the opening session, the Conference shall proceed, by acclamation or by secret ballot if it is demanded by at least six States, to the appointment of its Bureau composed of a President, two Vice-Presidents, two general Secretaries and as many Secretaries as there shall be Commissions. Each State shall be represented in the Bureau by not more than one member.

9. Once the Bureau is constituted, the Conference will have to organize for business. When the second Peace Conference met, regulations were voted, formulating and completing the rules adopted in 1899. Such regulations could be made permanent, but could be altered and amended at each session on the proposition of a certain number of States.

However, we are of the opinion that concerning two

questions the States ought to bind themselves more definitively. It is necessary, first, that the direction of the proceedings in the Commissions, where the most exhaustive debates will evidently take place, should not be left to themselves, but should be settled by the Conference itself. Secondly, the discussions, in plenary sittings and in Commissions, will henceforth be of such an importance that short summaries will no longer be satisfactory. It is necessary that the debates should be published in their entirety and be immediately brought to the knowledge of the public and the press. To facilitate the latter task and to avoid colored reports, it would be wise to organize, in addition to the shorthand service, a service of analytical reporting, like some excellent ones that exist in certain parliaments, as that of Belgium. The telegraphic agencies would be invited to forward these analytical summaries and, in case they should refuse, the States should combine to secure for them the widest and quickest transmission possible. The most complete publicity should be given in the future to the work done by the Conference of States. When the first Peace Conference met secrecy was maintained both for the plenary sittings and for the sittings of the Commissions, but the press was able to publish information of the most astounding accuracy. In the course of the second Peace Conference the plenary sessions were open to the public and the proceedings of the Commissions no longer took place in so strict a secrecy as in 1899. The time has come when the interests of the world ought to be discussed with full knowledge of everybody, as national interests are within all democratic States.

34. The Conference, on the proposition of the Bureau, determines the number of the Commissions and appoints their Presidents, Vice-Presidents and Secretaries.

A project of regulations for the conduct of its proceed-

ings shall be presented by the Bureau for adoption by the Conference. These regulations shall include provisions to secure instant, complete and analytic publication of the debates of the plenary sessions, as well as of Commission sessions.

10. The better to indicate the contractual character of international law, we deem it necessary to establish the forms to be given to its decisions by the Conference of States. The provision concerning this question confirms a traditional diplomatic practice.

But a much more important question is closely related with the problem here investigated. It must be decided whether the Conference of States should persevere in its devotion to what I dared once to call the fetish of unanimity. Respect for this unanimity was the reason why compulsory arbitration was defeated at the two Peace Conferences of 1899 and 1907. During the first of these assemblies it was in fact the veto of Germany, without really serious motives, which caused this check. Never was *sic volo sic jubeo* more peremptorily proclaimed, notwithstanding the diplomatic forms in which the Teutonic delegate wrapped the opposition of the imperial government. During the second of these assemblies, it was again Germany which entrenched herself behind juridical quibbles of an uncommon subtlety and especially of an uncommon cleverness. She succeeded in rallying to her opinion, besides Austria-Hungary and Turkey, Greece and Rumania.

One of the American delegates could not refrain from expressing his feelings and we deem it useful to reprint the essential passages of his speech concerning more directly the question here considered: "Assuredly, I pay all respect to the minority, but I have no doubt of the rights of the majority. I mean such a majority as has established this proposition,—the proposition for an

obligatory agreement into which those of the nations may enter who desire to do so, and the rest may abstain until each desires to come in. You will search in vain the records of the first Conference and of this Conference, and the correspondence that preceded both, for any assertion of this fatal claim of the necessity of absolute unanimity in order to secure for any act or convention a place in the Final Act of the Conference. And the proof on the records is clear to the contrary. Such a rule would paralyze the will and the action of the Conference at the behest of one power, even the smallest, and even though it should dissent for the mere purpose of destroying the unanimity."

Then, after some objections had been made, he added: "It has been said by the eminent president of the Conference that my proposition would impose the will of the majority upon the minority. That, gentlemen, is a clear misapprehension. I made no such claim. The claim is, that when the vast majority of the Conference desires to establish the agreement for obligatory arbitration for those who will to enter in, and those who will not to stay out, they have the right to do so, and to do it under . . . the flag of the Conference."

In our opinion, the last words of this declaration are to be stricken out, but, this excepted, the reasoning is unassailable. There is no doubt that the States which are free to enter an agreement as they please can not be prevented from doing so because such an agreement was not unanimously approved by the members of a Conference of States. Their right remains entire and they may exercise it at their pleasure, even during the session in which the said agreement was defeated. Evidently, in a diplomatic gathering, the majority can not impose its will on a minority, but the minority may still less paralyze the majority and limit by its opposition the

sovereignty of the States which form this majority.[4] In order to avoid equivocation, we think that it is necessary, by a formal provision, to proclaim in definite terms the solution which should prevail.

35. The resolutions of the Conference are taken in the form of conventions and declarations. It may also express wishes.

The unanimous adoption of a convention by the States represented shall incorporate its provisions into positive international law.

It shall, however, be allowed to a majority of States to conclude between themselves, during the reunion of a Conference, a convention which has not obtained a unanimous assent. Such a convention shall always be open to the subsequent adhesion of the dissenting States.

11. When both Peace Conferences met at The Hague, the government of the Netherlands had to support the burden of their material organization and it was made the depository for the adopted conventions. We are of the opinion that, with respect to the system advocated by us of frequent and itinerant sessions of the Conference of States, it is necessary that it should be attended by a permanent body, maintained at common cost by the various governments. The Permanent International Secretaryship we propose to create will be for the Conference of States what the International Court Office will be for the International Judicature. Its functions are defined in a special article whose text does not require explanations.

However, we deem it advisable to notice that the Secre-

[4] The Interparliamentary Union, in its session at Berlin in 1908, gave its adhesion to this opinion by inviting the States, whose delegates acquiesced in the projected treaty of compulsory arbitration submitted to the second Peace Conference, to transform this treaty into a definitive one at the earliest moment—*Interparlementarische Union, XV Conferenz*, pp. 141-143.

taryship could become the depository of all conventions agreed upon by the States and that it could look after the publication of an International and Official Collection of Treaties, a publication long demanded by all those interested in international law.

Among the resolutions to be indorsed by one of the next Conferences of States one will certainly tend to intrust the Permanent International Secretaryship with the publication of an International Official Record in order to give notice of all the acts performed by the various international organizations as well as the legislative and administrative measures of an international bearing taken by the various States.

36. There shall be instituted at common cost by the States at The Hague a Permanent International Secretaryship. This Secretaryship shall have the mission of preserving the original conventions adopted by the various Conferences; of receiving and publishing ratifications, adhesions and denunciations of these conventions; of registering preliminary propositions made by the States or by their Permanent National Committees; of arranging material preparation for the proceedings of each Conference and of the International Preparatory Committee. It may in addition be intrusted by the various Conferences with the execution of the decisions taken. It shall also look after the complete and analytical publication of their proceedings.

37. The Permanent International Secretaryship is placed under the control of the International Administrative Council, which will appoint its personnel, fix its annual budget and formulate its organic regulations. Its budget will include the expenses required for the sessions of the International Preparatory Committee.

12. In the next provisions we have tried to co-ordinate the suggestions made concerning the preparation of the

proceedings of the Conference of States. This preparation will evidently be dual: it will be national and international. It is difficult to make international preparation permanent: first, because this would require the uninterrupted presence of personages of high estate who can not be easily diverted from the important duties they are fulfilling in their own countries; and, secondly, because their work would be at each moment interrupted by the instructions they would be obliged to request from their respective governments. It is necessary that each of these personages, before their meeting, should study at home the questions to be solved, remaining in contact with their colleagues and exchanging regularly the conclusions and resolutions to which their respective studies have led them.

In our opinion, the period between two successive Conferences should be divided in two parts, one more especially national, another more especially international. It is obvious, however, that the National Committees could proceed with their sittings during the session of the International Committee and remain in relation with it; it is on this account that we have said that the National Committees are permanent.

38. The States pledge themselves to constitute Permanent National Committees intrusted with the prosecution and the promotion of researches and studies concerning the questions to be placed on the order of the day of the future Conferences. The results realized by these committees or through their intervention shall be communicated by each State, to all the other States, as well as to the Permanent International Secretaryship, at least one year before the meeting of the next Conference.

39. The International Preparatory Committee meets at least one year before the opening of each Conference in

order to examine the various propositions made by the States, to co-ordinate and harmonize them. This Committee is composed of delegates appointed, one for each State, from the members of their Permanent National Committees. This choice shall be made by the States as soon as they shall have appointed their National Committees, and shall be notified to the Permanent International Secretaryship, which shall draw up a list to be transmitted to all of the States and to the members of the International Committee. It shall invite them to come immediately into touch with one another through it.

40. The International Preparatory Committee shall itself formulate its organic regulations. The traveling expenses of each of its members shall be at the charge of the State which appointed them.

The General Report to be made by the Committee shall be prepared, printed and forwarded to each State, six months at least before each Conference, through the diplomatic agents accredited to the government of the Netherlands. It will be forwarded by registered mail to the States which are not represented near this government.

13. An important question was settled by the second Peace Conference in opposition to the decision taken by the first one, namely, the right of initiative. Conformably to the regulations adopted at its second plenary sitting, the Conference of 1899 declared "that outside of the questions mentioned [in the Russian circular of 30th December, 1898], it could not consider itself as competent for the investigation of any other question and that in a doubtful case it would have to decide if such or such proposition, made in the Commissions, could or could not be considered as being within the prepared programme."[5] This solution is consistent with the diplomatic practice which forbids plenipotentiaries to deviate

[5] *Conférence Internationale de la Paix*, 1899. Première partie, p. 14.

from their mandate. But the force of circumstances was stronger than a traditional habit. In spite of this, the Conference of States, without being a true parliament, possesses some of the characteristics of a legislative body and ought to benefit by some of its privileges. And so it happened that, without discussion, by a tacit acquiescence, the right of initiative for the missions was acknowledged in fact. In the course of the second plenary sitting of the second Peace Conference the delegations of Germany, Great Britain and the United States of America presented new propositions. The British delegation in the letter sent to the President of the Conference inserted this phrase: "The delegates of Great Britain consider that the adoption of the programme of work, which is to be studied by the Commissions of the Conference, does not exclude the possibility of placing on the order of the day other subjects which might be submitted during the Conference." After this declaration was read, the President ascertained that no observation was forthcoming and announced unanimous acquiescence therein.

We think that this resolution should be made definitive by a formal text. We propose in addition to give a right of initiative to the International Preparatory Committee. With numerous propositions drafted by the various Permanent National Committees before it, its task will be to consider those propositions from a more synthetic point of view, to complete them by new propositions, and make them more effective; it would be harmful to impede its mission by too much formality.

41. The right of initiative belongs to each of the missions which takes part in a Conference. This right is exercised by them at any plenary sitting, which will take under consideration the propositions made and shall decide if they ought to be referred to one of the Commissions, to the International

Preparatory Committee for immediate report, or to the next Conference.

The International Preparatory Committee while in session also enjoys the right of initiative and shall include its propositions in its General Report.

14. In view of the considerable work to be accomplished by the Conference of States, it seems necessary to reinforce the editing Commission, organized by both Peace Conferences, by a permanent element. It is very important that the various conventions agreed upon should contradict each other as little as possible and that their texts should be in harmony. The editing Commission to be chosen for each session will not have a task as difficult as those of 1899 and 1907, for the International Preparatory Committee will have taken care that the texts submitted to the Conference of States are as well drafted as possible; but it is to be feared, if the revision of the adopted conventions should be intrusted to the International Preparatory Committee alone, that it would try to make its opinion prevail over the opinion of the Conference of States. By adding to it a delegation of the Conference, this drawback will be avoided and there will have been created an agency capable of rendering the most important services.

42. The International Preparatory Committee shall form with the editing Commission of each Conference a Consultative Council of Codification. This Council shall especially fulfill the mission of co-ordinating the texts of the various Conventions and of embodying them in the body of provisions which the States shall have agreed upon during the successive Conferences.

15. A last question is to be considered, the right of petition. Should the peoples remain indifferent to the

work accomplished by the Conference of States, while this body is discussing the highest interests of humanity? They could not make up their minds to adopt such an attitude. These highest interests have found their expression in numerous free organizations; the international needs of men have induced them to come into closer relations despite frontiers and to unite in order the better to satisfy these needs. It is natural that they will appeal to the Conference of States and try to obtain its aid; it seems right to allow them to transmit their wishes to the Conference and submit to it the best means of realizing them.

It would not be fortunate, however, to see the Conference of States assailed by innumerable propositions, undigested improvizations of venturesome spirits. It is necessary that the projects submitted to the high assembly should be carefully studied and presented to it under the aegis of serious groups. In our opinion the right of petition should be exercised only by International Associations legally constituted. This restriction would have a great advantage, because it would compel men wanting to make propositions to discuss them with others, to come together, and especially to think internationally. Now all the fundamental reforms in the pact, whose provisions we are endeavoring to draft, will only be fruitful if they are imbued with an international spirit. This spirit ought to penetrate everywhere. It is necessary that individuals feel themselves not only members of a family, of a city, of a nation, but also, and mainly, citizens of the world. The obligation for every man, desiring to improve his condition and the condition of those surrounding him, to consider from a universal point of view the problems which interest him, will widen his horizon and transform him into a useful and active element of international public opinion; and he will thus furnish a neces-

sary support to those who, within the Conference of States, try to promote, facilitate and develop collaboration and understanding between all peoples of the earth.

43. A right of petition is granted to International Associations enjoying a legal status for all matters susceptible of legislative unification or for conventional juridical or administrative provisions. This right of petition shall be exercised through the Permanent International Secretaryship.

The petitions shall be transmitted for advice to the International Preparatory Committee. Report shall be made to each Conference at a plenary sitting on each petition and on the action which it is proposed to the Conference to take on it.

The final paragraph of this article is especially important. It is indeed indispensable, if the action of the International Associations is to be effective, that all petitions should have full publicity and that the Conference of States, with the full knowledge of the promoters and the public, should act regarding them after an eventual discussion in plenary sitting. There should be no occult influences capable of throwing out propositions whose tendencies might displease certain States. The Conference of States ought to be an open and public tribune for all ideas tending to improve and intensify international life.

CHAPTER IV

Judicial Organization

1. IN this part of our project we have tried to lay down the main lines of an international judicial organization sufficiently adaptable and detailed to secure the full observance of the principle proclaimed above that "all conflicts between States shall be settled in an amicable or contentious manner."

It is toward this goal that the efforts of the Universal Peace Congresses, the Interparliamentary Union, and the Institute of International Law have been directed for a long time. In the United States of America a powerful association has been formed which is exclusively devoted to the study of the judicial settlement of international disputes.[1] The two Peace Conferences, by creating the Permanent Court of Arbitration and the International Prize Court and by elaborating a project for a Court of Arbitral Justice, endeavored to solve the problem, but could only very imperfectly reach a partial solution. The debates, which took place on these various institutions, constitute a huge library in which the most valuable information can be gathered. Taking into account these discussions, we have arrived at the conclusion that, in a general pact, it was only needed to include some essential provisions as a basis for a complementary organic convention. In such a convention the technical details can

[1] In this same country two other organizations exist, the *World Peace Foundation* and the *Carnegie Endowment for International Peace* with similar aims, but covering a broader field. There was also founded a *World Court League*.

be worked out in order to secure the regular development of the international judicial institutions.

2. A first article affirms the necessity of a judicial organization and determines both its conciliatory and suit-deciding character. A second article enumerates the various jurisdictions, as well amicable as arbitral or contentious. The idea which inspired us is that all the methods designed to settle disputes are judicial in a certain degree. While those who are intrusted with the task of elucidating or ending a dispute may call upon good sense, morals, equity or right, nevertheless they judge more or less strictly according to a criterion, and they judge even if they pronounce neither sentence nor judgment. Therefore we have established three jurisdictions: amicable jurisdiction (good offices or mediation, occasional or permanent commissions of inquiry, council of conciliation), voluntary or arbitral jurisdiction, and contentious jurisdiction. The complete domain of international disputes is in this way covered and looked at as a whole.

44. In order to secure the peaceful settlement of international disputes, the States established an international judicial organization. This organization includes a triple jurisdiction, amicable, arbitral and contentious.

45. Amicable jurisdiction includes Good Offices and Mediation, the International Commissions of Inquiry and the International Council of Conciliation. There are established a Permanent Court of Arbitration and an International Court of Justice.

3. In the last years, jurists have asked whether the competence of the various jurisdictions should remain limited only to disputes between States or whether it

would not be more logical to submit to them other international differences, such as those occurring between a State and a citizen of another State concerning the execution of a contract between them or those between citizens of two States concerning a question of private international law. Nearly all jurists have advocated this enlarged competence. Besides, several arbitral tribunals have been established by the States concerning difficulties about enterprises or concessions granted to a private person by a foreign State. Others have advocated the creation of a Court of Cassation or of Appeal for the interpretation of international conventions on civil or commercial private law. We have taken these precedents and opinions into account in drafting the following article.

46. Considered as international disputes are those which occur between States, between States and citizens of other States, and between citizens of two or more States.

The States reserve the right to submit to an arbitral or contentious jurisdiction the disputes of the two last classes only in case of appeal or cassation.

The last paragraph is intended to avoid hurting the susceptibilities of certain States which would assent only with difficulty to the removal from their national courts of lawsuits in which foreigners are interested. It will often happen that those courts give satisfaction to the contending foreigners and that consequently recourse to the international judicature can be avoided.

4. In view of the numerous jurisdictions prepared to settle international disputes, it has been asked whether it would not be necessary to fix the order in which recourse to them should be taken, or whether it would not be better to grant to the States the faculty of selecting the jurisdictional modes they prefer. We have subscribed to this latter opinion.

47. The States may, by a general or special stipulation, agree to which of the various jurisdictional modes they wish to give preference.

5. But in case the States should not agree, it is necessary that a plaintiff State should not be foreclosed of its right of suing a defendant State, recalcitrant or negligent. It is necessary that a special procedure should permit putting an end to such a situation; it would be, in international law, the institution of a procedure by default. The article devoted to this question affirms only the principle. Special provisions in the organic convention of the International Judicature will secure its application.

48. When contending States are unable to agree upon a special jurisdictional mode, there will be secured to the most diligent State a mode of procedure in order to submit the dispute to the jurisdiction of its choice.

6. The fact that citizens of the States may appeal to the International Judicature makes it necessary to fix the modes of recourse open to them. It is obvious that the contentious jurisdiction alone is normally competent for the differences between a State and the citizen of another State or between the citizens of two or more States. However, in case a State should take over and make the cause of its citizen against another State its own there would be no objection to submitting the difference, as has often been done, to an arbitral tribunal, but on such a hypothesis the citizen alone could not act on his own authority.

49. Access to the amicable and the arbitral jurisdictions is open only to the States. Access to the contentious jurisdiction is open to the States and their citizens.

7. In the convention, agreed upon in 1899 and amended in 1907, for the Pacific Settlement of International Disputes, there is a provision (Art. 48) allowing the States to interfere when a dispute arises and to remind the contending parties that the Permanent Court of Arbitration is open to them. We think it useful to maintain this provision but to apply it to all the jurisdictional modes.

> 50. The States consider it their duty, if an acute conflict threatens to arise between two or more of them, to remind such States that the International Judicature is open to them. The fact of so reminding the States at variance can only be regarded as in the nature of good offices.

Such a reminder will have the more value because, the States having pledged themselves to settle all their disputes in an amicable or contentious manner, the Society of States would have the right to constrain them to respect the obligation taken.

8. What will be the law which the various jurisdictions may call upon to settle the disputes submitted to them? A provision in the convention concerning the International Prize Court completely answers this question and we can scarcely do better than to reprint it here.

> 51. If a question of law to be decided is covered by a convention in force between the States which are themselves or whose subjects or citizens are parties to the proceedings, the competent jurisdiction is to be governed by the provisions of the said convention. Otherwise it shall apply the rules of international law. If no generally recognized rules exist, the competent jurisdiction shall give judgment in accordance with the general principles of justice and equity.

9. As a consequence of their pledge to settle all their disputes in an amicable or contentious manner, the States

are obliged to abide by the decisions given. This consequence was twice included in the conventions adopted by the Peace Conferences, namely, in those concerning the Permanent Court of Arbitration and the International Prize Court. Despite its obvious character we think it useful to formulate it in explicit terms.

52. The States pledge themselves to submit in good faith to the decisions of the competent jurisdictions and to carry them out with the least possible delay.

10. The question of the seat of the International Judicature ought also to be the subject of a special provision. Just as it is important that the Conference of States should be itinerant, it is needful to establish the International Judicature in a place where it may escape from dangerous influences. It could move only in cases of unforeseen circumstances or with the consent of the States, but even in this last hypothesis grave motives should exist to render a removal admissible. Not only might the interests of the States directly involved be exposed, but the superior interests of justice might be endangered.

53. The International Judicature has its seat at The Hague. The International Court of Justice and the International Council of Conciliation cannot transfer their seat elsewhere except in circumstances beyond their control.

The States, however, reserve the right to fix elsewhere the seat of a Commission of Inquiry or of an Arbitral Tribunal, if special circumstances render such a step necessary. The seat once fixed may not, except in circumstances beyond their control, be transferred elsewhere by the commissioners or the arbitrators without the consent of the parties.

11. The necessity of creating a permanent office at the

seat of the International Judicature was acknowledged by the States when they instituted a Bureau at the seat of the Permanent Court of Arbitration. We propose to enlarge this office and to transform it into an International Court Office for the needs of all the jurisdictions which are or may be established.

54. There is created at the seat of the International Judicature an International Court Office, placed under the control of the International Administrative Council, which appoints its officers and employees, determines its annual budget and formulates its organic regulations.

12. In the conventions relating to the Court of Arbitral Justice and the International Prize Court, it was foreseen that delegations should be appointed to fulfill certain definite functions. We think that such an organization should be maintained and that it should be intrusted in addition with the mission of admitting or rejecting appeals preferred by private persons against decisions of national tribunals; it would thus fulfill the rôle played by the Chamber of Requests of the Court of Cassation in France. It would prevent unconsidered appeals from being submitted to the International Court of Justice.

55. A Permanent Judicial Delegation is instituted, made up of three titular and three substitute judges, chosen annually from and by the International Court of Justice and intrusted with the task of acting in cases of urgency or at the request of the parties, as well as on the admissibility of appeals by private persons against decisions of national tribunals.

13. It is likely that the International Judicature, as it is here constituted and as a complementary convention will organize it, will show the imperfections inherent in all human institutions. Who could better than the high

magistrates permanently established at The Hague determine the deficiencies of the international judicial machinery and point out the improvements to be introduced? Their long experience and their high moral character will give to their advice a considerable importance. We are of the opinion that it is wise that the Society of States should benefit by it.

56. The International Court of Justice shall meet each year in General Assembly to deliberate on improvements to be introduced in the international Judicial Organization. The propositions drafted by it shall be transmitted, through the Permanent International Secretaryship, to the International Preparatory Committee to be submitted by it to the next Conference.

CHAPTER V

International Administration

1. DURING the last fifty years an extensive movement toward a concerted international administration has been going on. Actually the number of conventions, agreed upon to this end by the States, is as high as 54 and the number of international standing organizations amounts to 19.

They have strongly intensified international life by facilitating the transportation of persons and things, by rendering nearly instantaneous the exchange of ideas and news, by securing the protection of peoples against epidemics, calamities and death, by co-ordinating scientific researches, by guaranteeing respect for the rights of authors, inventors and traders, by giving to an ever-growing number of men the feeling of being at home in all parts of the earth, in transforming the globe into the common abode of men.

This fact, of so wide-reaching importance, escapes the consciousness of both the masses and the élite. It ought to be made tangible and to acquire, in the eyes of all, its high and imperial value. This fact should, in the public mind, command the whole world's activity. Collaboration by the peoples has expanded, we may say, in spite of them and in full ignorance; it should in the future be done, willingly and with a growing intensity. The States have to consolidate their work: it was only sporadic and occasional, it must become intentional and organic. On the family household were superposed, in the course of

the centuries, the household of the city and the household of the nation; wonderful institutions were born out of the necessity for larger and larger communities to meet the needs of their members. The time has come to place the world household above the family, urban and national households. Would it really be too heavy a task for the States to confirm what they have till now performed to this end and to pledge themselves to proceed with their common endeavors with increased energy and speed? This is the aim of the two following articles:

57. The States confirm the conventions concluded by all or several of them with the aim of securing their collective collaboration in endeavors and services of international interest, and pledge themselves to adhere to those conventions which they have not already signed.

58. The States shall consult together with the object of multiplying, with the shortest delay possible, similar endeavors and services in all domains of human activity. In the elaboration of these endeavors and services a special appeal shall be made for the collaboration of international organizations of private initiative.

2. In a convention of general character, an enumeration of the endeavors and services realized and to be realized seems more likely to find its place in a transitory provision. This will be done for the more pressing ones (Art. 69). We think, however, that it is needful to give here, in addition to the list of the conventions actually agreed upon by the States and of the organizations already created by them, the list of the organizations and agreements about which it should be necessary that the States come to an understanding. Such an enumeration will give a more accurate idea of the results obtained up to the present and of the huge field opened to international collaboration.

LIST OF REALIZED AGREEMENTS [1]

1815 Régime of the international rivers.
1851* International Sanitary Union.
1892 Maritime and Quarantine Sanitary Council of Egypt.
1894 Superior Sanitary Council of Constantinople.
1894 International Sanitary Council of Tangier.[2]
1907 International Office of Public Hygiene.
1856 International régime of the Danube.
1863* Universal Postal Union.
1864 Red Cross Convention.
1864* International Geodetic Association.
1865* Universal Telegraphic Union.
1865 Latin Monetary Union.
1865 Maintenance of the Cape Spartel Lighthouse.
1875 Scandinavian Monetary Union.
1875* International Bureau of Weights and Measures.
1878 Common action against phylloxera.
1878* Transportation of Merchandise by Railroads (European).
1880* Publication of Customs Tariffs.
1880* Protection of Industrial Property.
1880* Protection of Artistic and Literary Property.

[1] This list is drawn up in chronological order and will enable the reader to get a good idea of the development in the course of time of the phenomenon here analyzed. It will be noticed that we have eliminated all agreements having for their object the regulation of war, which recent events have proved useless.

The asterisk indicates that the States have created an office or a bureau to assure the execution of the measures adopted.

[2] The Tangier sanitary council dates in fact from the beginning of the nineteenth century. Tangier was then the only Mohammedan port on the Mediterranean open to Europeans and the consuls tried to control there epidemics due to contagion among the passengers on vessels bound for Mecca. In 1818 the plague followed an unsuccessful attempt to keep a vessel out of the port. As a result Sultan Abd er Rahman organized the council with the aid of the local consuls.

1882 Protection of Submarine Cables.
1882 Fisheries police in the North Sea.
1882 Technical Unity of Railroads (European).
1884 Selection of a First Meridian.
1885 Exchange of Reproductions of Works of Art.
1888 Régime of the Suez maritime canal.
1889 Regulation of Maritime Navigation.
1889* Union of the American Republics.
1890 Legal Protection of Workers.
1890* Repression of the Slave Trade.
1893 Unification of Private International Law.
1898 Gauging of Nonseagoing Vessels.
1899* Permanent Court of Arbitration.
1899* Exploration of the Sea.
1900 Protection of Wild Animals in Africa.
1900 Revision of the Nomenclature of Causes of Death.
1902 Protection of Insectivorous Birds.
1902* International Sugar Union.
1902* Pan-American Sanitary Convention.
1902 Unification of the Formulas of Heroic Medicines.
1903* International Association of Seismology.
1904 Repression of the White Slave Trade.
1905 Unification of Maritime Law.
1905* International Institute of Agriculture.
1906* Radiotelegraphic Union.
1906 Control of Spirituous Liquors in Africa.
1907* Central American Union.
1909 International Committee of the Map of the World.
1909 Regulation of the arms trade in Africa.
1909 Repression of the Use of Opium.
1909 Regulation of the Use of Saccharine.
1910 Repression of the Circulation of Obscene Publications.
1910 Unification of Commercial Statistics.

1911 South American Postal Union.
1911 Protection of Seals and Maritime Otters.
1912 International Regulation of the Hour.

LIST OF AGREEMENTS TO BE REALIZED [3]

1. Foundation of an international bank.
2. Unification of weights, measures and coins.
3. Organization of international statistics.
4. Creation of international institutes of commerce, industry, colonization, etc.
5. International organization of education.
6. Internationalization of terrestrial and maritime ways of communication.
7. International protection of the natural resources of the globe.
8. International protection of intellectual culture.
   a. Concerted scientific researches.
   b. Exchange of professors and students.
   c. Development of exchange services.
   d. Publication of an international encyclopedia.
   e. International bibliographic organization.
9. Regulation of aërial circulation.
10. Codification of public and private international law.

3. Some words of explanation are necessary to justify the final paragraph of the above article by which the States would pledge themselves to appeal to the collaboration of international organizations privately initiated. These organizations represent more particularly

[3] In the list here drafted we have tried to limit our propositions to measures and projects which have already obtained the adhesion of important personages or groups. It should also be noticed that under one rubric several questions are often implicitly included. The international organization of education, for instance, includes the creation of a pedagogic center, the foundation of an international university and the equivalence of diplomas.

the international aspirations of the peoples and they have imposed on themselves the task of studying each of the endeavors or reforms to be realized. It is to be noticed that the origin of nearly all the conventions now in force can be ascribed to the disinterested efforts of one or another group of men imbued with an international spirit. Besides several of the organizations created by the States, there usually exist free associations whose aim it is to secure the improvement of the official institution they have helped to promote. As much from gratitude as from a sound appreciation of the facts it is necessary to bear witness to the services which may be rendered by international associations.

Of these, two are able to exert a preponderant action: the Interparliamentary Union, grouping more than three thousand members of the main legislative bodies of the world; and the Union of International Associations, federating at present 172 international groups whose adherents are to be numbered by hundreds of thousands. The first may and can secure for the work to be done by the States the aid of the parliamentarians upon whom devolves the voting of the necessary appropriations: the second has tried since its foundation, by its triennial world congresses (1910 and 1913) and by its review *La Vie Internationale,* to formulate and to solve the great problems common to mankind as a whole. Both may be considered as the authoritative expounders of universal public opinion and they can secure for States, willing to develop international collaboration, an unequaled moral and material support.

4. But it is not enough to promote the formation of a series of new organizations; it is necessary to co-ordinate their endeavors, to make them a synthetic whole, to watch their evolution, to improve them incessantly, and conse-

quently to create to this end a central organism of initiative, supervision and control; but it seems requisite that such an organism should originate in national organisms appointed to investigate and to state the international needs of each country. This twofold aim is embodied in the following article:

> 59. An International Administrative Bureau is established to co-ordinate the activities of the various organisms established by the above-mentioned conventions, to facilitate the fulfilment of their task and to promote the creation of new organisms. Each State shall appoint a service intrusted with its international administrative relations to be represented by one delegate in the International Administrative Bureau.

5. The following article does not require long explanations. It provides implicitly that the International Administrative Bureau shall have itinerant sessions, but that it may nevertheless organize permanent services at its official seat, which we propose to establish at Brussels, where the Interparliamentary Union and the Union of International Associations are also situated. At Brussels, too, numerous international institutions, with which the International Administrative Bureau will have to come into close relations, have their secretaryships.

The most characteristic and at the same time the most practical suggestion may be the provision aiming at the subdivision into departments of the various services of the International Administrative Bureau. Schemes for such a subdivision have already been drafted and the creation of the following departments proposed: transportation; agriculture, industry and labor; commerce, colonization and emigration; hygiene; sciences and arts; justice. Such an organization would become more effective once the States should decide to bring together at one

and the same place the offices of the several official administrative institutions.

A final provision completes the proposed organization by the addition of High Consultative Councils; their function is to express, especially from an international point of view, the desires and wishes of persons interested in the work done by each department, in order to counterbalance the too national tendencies of the delegates to the International Administrative Bureau.

> 6o. The International Administrative Bureau deliberates, the delegate of the State on the territory of which it meets presiding. It formulates its by-laws and organizes the permanent services it deems necessary to the fulfilment of its mission. It appoints their remunerated employees.
>
> It may institute departments more specially intrusted with the management of connected services; it is, however, agreed that the autonomy of the international organizations will be respected as largely as possible.
>
> There shall be established, near the various services or departments, High Consultative Councils, composed of delegates appointed by the free international groups interested in the work performed by those services or departments. The seat of the International Administrative Bureau is at Brussels. The traveling expenses and the eventual indemnities granted to the delegates are at the charge of their respective governments.

6. We have pointed out above that the Permanent International Secretaryship and the International Court Office are to be controlled, in their material operations, by an International Administrative Council. The provision here drafted adopts and enlarges a body already created by the Peace Conference for the supervision and management of the Bureau of the Permanent Court of Arbitration. It seemed difficult to us to subordinate these two institutions, of so special a legislative and judi-

cial character, to the International Administrative Bureau or to the International Budgetary Committee, which will be spoken of later. The personnel of both institutions will have to perform a task so important that it seems most convenient to intrust its appointment to the direct representatives of the States. The text of the article devoted to the International Administrative Council is taken over, in its essential elements, from the similar provision of the Convention for the Pacific Settlement of International Disputes.

61. A Permanent Administrative Council is appointed to control the operations of the International Permanent Secretaryship and of the International Court Office. It is composed of the diplomatic representatives accredited to The Hague and of the Netherlands Minister for Foreign Affairs. It meets, the latter or in his absence the oldest member, acting as president.

The Council settles its rules of procedure. It decides all questions of mere administration which may arise with regard to the business of the Conference of States and of the International Judicature.

The Council's deliberations are valid if nine members are present. It may intrust to some of its members the daily administration, and it may be aided by salaried employees.

The Council communicates to the States the regulations adopted by it. It furnishes them with an annual report on the labors accomplished under its control and the expenditures made.

7. The last question to be considered, from an administrative point of view, is the drafting of an International Budget. This question has been already considered in a diagram published by the Union of International Associations in which was opposed, to the eleven billion francs of annual military expenses, the trifling sum of about two million francs devoted by all the States to-

gether to endeavors of world-wide interest.[4] If to these grants, the subsidies devoted by the Union of American Republics to Pan-American endeavors should be added, it would be hardly possible to attain a total sum of more than three millions francs. This represents a percentage of 0.002727... less than three cents on each hundred dollars expended on preparation for war! And during the first year of the great war the amount of wealth wasted by the belligerents alone reaches ninety billion francs!!!

This tremendous disproportion between destructive and constructive expenses does not constitute, in our opinion, a sufficient motive to lose all interest in the problem here considered. The International Budget may be small at the outset: this is no reason for questioning its rapid growth. If the States are truly able to convince themselves that they are bound to extend their international relations and to improve the rudimentary means

[4] Below are listed the subsidies in francs granted by the States during 1913:

Universal Postal Union	*fr.*	125,000
International Geodetic Association		85,000
Universal Telegraphic Union		100,000
International Bureau of Weights and Measures		100,000
Freight Transportation by Railway		100,000
Publication of Customs Tariffs		130,000
Protection of Industrial Ownership		60,000
Protection of Copyright		60,000
Repression of Slave Trade		25,000
Permanent Court of Arbitration		30,000
Exploration of the Sea		95,000
International Sugar Union		25,000
International Seismological Association		35,000
International Institute of Agriculture		500,000
Radiotelegraphic Union		40,000
International Office of Hygiene		150,000
Unification of Commercial Statistics		35,000
Total	*fr.*	1,695,000

of intercourse by which their subjects may be brought together and may understand and appraise one another, the International Budget will easily outrun the most optimistic forecasts.

Of course, the International Budget ought to be approved by the Conference of States and as, in the system we advocate, this body meets only every two years, the budget should be biennial.

As a matter of fact, the contributions of the States to the expenses of the various offices and bureaus created up to the present have been paid through the governments on the territories of which those bureaus and offices are established. This process was the cause of many difficulties, of multifarious accounts, of disastrous delay sometimes. All these contributions should be consolidated and made into a single fund; it would chiefly be needful that all the States should accede to all the international institutions as a token of their will to be true members of the Society of States. In fact, there is no one of these institutions in which the States or at least their subjects are not directly or indirectly interested.

As to the share in the expenses to be assumed by each State, we propose to adopt the solution provided for by the article of the Convention for the Pacific Settlement of International Disputes by which the States bear the cost of the Bureau of the Permanent Court of Arbitration in the proportion set up for the Bureau of the Universal Postal Union. It is certain that this last apportionment, which has been applied for half a century, is quite satisfactory and corresponds nearly exactly to the relative importance of the various States; the States, by the way, would have the less right to complain because they choose for themselves the class which they desire to enter.

62. The States participate in the preparation of an International Budget intended to cover the expenses of the various international institutions, official and private. This budget is biennial and is adopted during each session of the Conference of States.

It shall be supported by annual payments made by the States in the proportion fixed for the International Bureau of the Universal Postal Union. These payments shall be made during the month of January.

The expenses agreed upon by special conventions for the management of international institutions shall be embodied in the International Budget and borne by all the States.

8. The International Budget, owing to the probable and desirable development given to the official and private international institutions, by acquiring the growing importance above-mentioned, will, like national budgets, require the assistance of experts. Besides, it is to be expected that international financial questions will raise grave problems to be solved only by first-rate specialists, if the idea of establishing an International Bank is carried out.

We think that it would be wise, from the beginning, to create an organization capable of evolving normally according to needs and circumstances. This organization, whose members the States will have the greatest interest in selecting from among the most distinguished financiers, should make out the International Budget and exert a high control over the International Treasury intrusted with the management of the funds granted to the various international institutions. This International Treasury could eventually take charge of other financial operations for the States or for private persons engaged in international undertakings.

Because the International Treasury, in an international way, would fulfill a task similar to the one intrusted to

national treasuries, it seems wise that orders of payment issued by it should be submitted for approval to the controlling organization of the State on whose territory it shall be established. This measure will largely diminish the responsibility of the directors of this financial institution.

63. An International Financial Committee is intrusted with making out the International Budget and its reference to the States with an explanatory statement three months before each session of the Conference of States. This Committee is composed of one delegate for each State selected from the high officers in the financial service. A State may intrust its representation to a delegate of another State; no delegate, however, may represent more than two States.

The International Financial Committee is intrusted with the high direction of the International Treasury; it appoints its personnel, fixes its expenses and formulates its organic regulations.

It shall meet at least once a year at the seat of the International Treasury and inspect the operations thereof. These operations are conducted under the supervision of the financial controlling organization of the State where the International Treasury is situated; this organization shall have charge of validating its orders of payment.

CHAPTER VI

General and Transitory Provisions

1. IN the present chapter we examine some provisions applicable to all or most of the institutions spoken of in the previous chapters. They concern first of all the personal international situation of the judges, commissioners, officers, employees, delegates and members of the various international institutions.

It is necessary to subdivide these agents into two groups: (1) those who, as judges of the International Court of Justice and officers of the International Court Office and of the Permanent International Secretaryship, are occupied with permanent functions; and (2) those who, as delegates to the Conference of States, members of amicable or arbitral jurisdictions, of the International Preparatory Committee, of the International Administrative Bureau and of the International Financial Committee, are intrusted with a merely temporary mission. We suggest denationalization of the first class and granting to the second class the privilege of exterritoriality.

The principle of denationalization is new but is easily vindicated by the necessity that those intrusted with permanent international functions should be governed by impartiality at every moment of their delicate careers. They should not be drawn toward their respective countries by the hope of holding there some prominent position or by any participation whatever in its public life. They ought to acquire a new soul, to feel themselves truly

men in the broadest sense of this word and to understand that for them prejudices, hatreds, mistrust no longer exist; they must in some measure liberate themselves from all that could darken their clear vision of things. But it is needful, moreover, that their security should be complete and that the States pledge themselves to protect them against the calumnies, reproaches and grievances which people, in some ultranationalist circles, will be too inclined to utter against them. Their purely civil interests, owing to the actual state of international private law, will remain submitted to national laws.

As to the privilege of exterritoriality, its application can not raise difficulties since it has long been a rule in the diplomatic relations between States. The conventions agreed upon by both Peace Conferences have provided, in favor of the judges of the jurisdictions established or projected by them, for the enjoyment of diplomatic privileges and immunities in the performance of their duties. The articles here proposed only generalize a measure already agreed upon by all the States.

64. The functions of judge of the International Court of Justice, those of clerk of the International Court Office and of the Permanent International Secretaryship are incompatible with any national functions whatever.

The persons appointed to these functions are denationalized during their incumbency and are placed under the collective safeguard of the States. As to the preservation of their civil interests they may, however, appeal to the legislation of their native country.

65. Delegates to the Conference of States, members of the amicable and arbitral jurisdictions, of the International Administrative Bureau and of the International Financial Committee, during the continuance of their mandate, enjoy the privilege of exterritoriality.

2. The principle of the equality of States and the necessity of facilitating individual relations between the persons in charge of international functions require that all national hierarchic denominations, titles and honorific designations, sometimes so complicated and so different in various countries, should not be used during international meetings and in the intercourse between members of the various international organizations. It would even be advisable to suppress the use of titles of nobility and of the term "excellency," which truly adds nothing to the moral value of the personages fulfilling international functions. The mere indication of these functions is in fact the highest token of confidence which could be given and the most eloquent expression of the merit which commended them to the choice of the States. The Society of States as such can create neither titles nor orders; it can not be compelled to acknowledge those created by the States, thereby yielding to national traditions and customs. This is the object of the following article:

> **66. Neither international titles nor orders exist. During the continuance of their mandate, the persons enumerated in the previous article shall be designated only by the denomination of their international functions.**

3. A question which could perhaps be considered as secondary and form the subject of a subsequent convention between the States is that relating to the traveling and postal expenses of those intrusted with an international mission.

However, in several national constitutions, provisions were introduced securing to the representatives of the people a right of free circulation in order to obviate its acknowledgment depending on an occasional majority. If this right of free circulation is so important from a national point of view, has it not an equal, if not greater,

importance from an international point of view? Is it not obvious that, for some States, situated at long distances from the meeting places and seats of international institutions, traveling expenses of their delegates may become sometimes a serious hindrance to the sending of truly representative delegations. The cost of living for each delegate will be largely the same and can be adjusted to the resources of the States represented, while traveling expenses are most unequal and irreducible.

The grant of a right to travel free to a relatively small number of international delegates, officers and employees will not be a very heavy burden on the States, for most of them have retained the right of granting such privileges or of claiming them from railway and navigation companies. If it would be better in our opinion to include a special provision to this end in the international pact, this is mainly because direct understandings between the 46 sovereign States of the world would be reached only after endless parleys, when it is most necessary that the international organizations should be able to operate normally as soon as possible.

One will notice, in the text of the following article, that the advantage of free circulation will be granted not only to each acting member of an international institution but also to those who accompany members. It is indeed to be taken into account that the members of international organizations are either well along in years or come from a great distance, and will not desire to remain separated for months at a stretch from at least one of their immediate family. This practice has become a rule in numerous American institutions and we think it advisable to adopt it from the international point of view.

The postal franchise will be easier to introduce because to secure it an appeal to the International Bureau of the Universal Postal Union will be sufficient.

A paragraph of the next article authorizes the States to secure similar advantages for the free international institutions whose co-operation will be asked for or whose work has an international bearing. For those institutions traveling and postal expenses of members are often the most insuperable hindrances to the fulfilment of their task.

> 67. The States shall create a free international traveling ticket in behalf of the delegates, officers and members of the various international institutions and of a person in their company. The Postal franchise shall also be granted to them for their official correspondence. The free international institutions may benefit by these advantages through the medium of the Permanent International Secretaryship.

4. The gravest problem yet to be considered is the revision of the present convention and of its complementary conventions. The main idea which ought to prevail in this delicate matter is that it is not necessary to place too great an obstacle in the way of a demand for revision, which might at first sight meet with little sympathy. It is well that propositions should be made and that they should induce useful and fruitful discussions. The organization of the Society of States ought to progress, to improve, to evolve unceasingly; nothing would be more perilous for it than stagnation and rigidity. We have, therefore, limited to five the number of States able to apply for a revision.

But, on the other hand, a revision should not be left to the decision of a mere majority. Though we have criticised the absolute application of the rule of unanimity, a modification of the conventions organizing the Society of States ought to obtain a quasi-unanimous assent; otherwise there would be an overwhelming risk of promoting the breakup of the agreements reached and of bring-

ing the world back to the anarchic situation from which the peoples are anxious to escape. We have, therefore, provided that the suggested revision should obtain the approval of at least four-fifths of the States. This could provoke the secession of only one-fifth of the States at most, but it is to be expected that the greatest efforts will be made to avoid such an extreme result; it is to be expected also that the change in universal public opinion will enable it to exert a powerful influence on the governments and oppose rash proposals of revision.

68. At the request of five States revision may be undertaken of one or several designated provisions of the present convention or of the complementary conventions; the same number of States may also propose the introduction of new provisions.

This request shall reach the Permanent International Secretaryship at least one year before the next meeting of the Conference of States; it shall be forwarded immediately to the other States and to the International Preparatory Committee.

The request shall include an explanatory note and shall be submitted to the Conference of States with a report of the International Preparatory Committee.

A proposed modification shall be adopted only if it is accepted by four-fifths of the States.

5. The first transitory provision is self-explanatory. Its object is to pledge the States to conclude complementary conventions securing the application of the principles included in the present convention. It seemed useful to enumerate the main conventions to be agreed upon; this permits a survey of the work to be done and expresses in some measure the obligation taken by the States with mankind to formulate without delay the main international laws.

We have tried to draft some of these complementary

conventions to show that it will be possible, without too much difficulty, to realize the programme we have outlined. These conventions are given as an annex to the text of the charter; as a preamble to each, a short notice sets forth the underlying ideas embodied.

69. Complementary and regulatory conventions shall be immediately concluded by the States in order to secure the realization of the provisions of the present convention.

Their subjects shall be: the international judicial organization; the methods of constraint and the use of armed force; the procedure to be followed by national communities in order to secure their autonomy or the redress of their grievances; the regulation of emigration; the establishment of councils of management and the protection of backward populations; the colonial régime; the customs régime.

70. In the above-mentioned conventions are to be embodied, in proper terms, the provisions of the present convention containing the principles relating to these conventions.

6. We have already expressed above our hope that the press will fundamentally change its traditional action. We think, however, that the loyal and honest press is as desirous as we are to put an end to the behavior of certain sensational papers. It is necessary that the States should be protected from the implied accusations too often directed against them with impunity since they are unable to indict the responsible authors. Nearly all legislations contain provisions for protecting the rulers of States against similar attacks; there exists no motive for refusing to the peoples a similar protection. Of course, nobody advocates the restoration of censorship where it has been suppressed, or its maintenance where it has unfortunately been revived during the great war. It is a question only of embodying in the penal law of each State

provisions punishing such offenses by penalties severe enough to be effective; in our opinion imprisonment from one to five years and a cumulative fine of $1,000 to $10,000, without reprieve or extenuating circumstances, would not exceed a just figure. Journalists will be free as before to write what they please, but they ought to know that their lies, insinuations and calumnies will not escape prosecution, because they were circulated through the press and directed against communities actually disarmed.

71. The States pledge themselves to include in their penal laws provisions intended to inflict severe penalties on those who, by lies, calumnies, insinuations or insults, attempt to disparage foreign peoples and to excite them one against another.

The States afford to their respective diplomatic and consular agents the right to impeach the offenders and if necessary to summon them before the competent jurisdictions.

7. A purely formal modification is contained in a last article. Several governments have already spontaneously changed the name of the public administrations intrusted with preparation for war and their relations with other States. They have considered that it was needful to remove from the first of these administrations its aggressive and from the second its hostile character and they have renamed them by devoting the one to *national defense* and the other to *international relations.* We think that as a token of mutual benevolence all the States should pledge themselves to adopt a similar change. Words have a suggestive power which should not be neglected.

72. The States pledge themselves, if they have not done so

already, to change the names of their offices, secretaryships or ministries of foreign affairs, war and navy; these will be respectively named offices, secretaryships or ministries of international relations, national defense and naval defense.

MAGNISSIMA CHARTA

FULL TEXT

MAGNISSIMA CHARTA

Preamble

Animated by the ineradicable and steadfast purpose to avoid the renewal of the slaughter and dismay which have just staggered the world;

Decided to eliminate all appeal to war from international intercourse;

Anxious to form a more close and perfect union;

Determined to establish the empire of law and to assure the triumph of justice;

Resolved to provide for their common security and to organize their common defense against all perils whatsoever which may assail or menace them;

Imbued with a spirit of benevolence, confidence, loyalty and frankness which ought henceforth to preside over their relations;

Convinced that the interest of each of them is to promote the general welfare of the peoples and to secure mutually their inalienable independence;

The following States have appointed as their plenipotentiaries . . ., who, after having communicated their full powers, found to be in good and due form, have agreed upon the following provisions:

Preliminary Title

rights and duties of the states

Art. 1.—States have for their essential mission not only the promotion of the wellbeing of their own citizens, but also the furtherance of the common welfare of humanity. They pledge themselves to combine and co-ordinate their efforts to attain this end.

ART. 2.—The States are united in fellowship. They must aid one another and are under the obligation to guarantee their mutual security.

ART. 3.—In the exercise of their rights, States may not do injury to the rights of other States.

ART. 4.—The sovereignty, autonomy and independence of States are placed under their collective safeguard. They can be restricted only to the extent that each State freely agrees thereto.

ART. 5.—The peoples have the inalienable and imprescriptible right to dispose freely of themselves. No annexations or transfers of territories can take place without the consent of their populations.

ART. 6.—The minor populations are placed under the collective protection of the States. The territories which they inhabit are administered in favor of the natives and in order to secure their full moral and material development.

ART. 7.—The colonies properly so called and the protectorates are presumed to have been established with the consent of the States and their administration constitutes a collective delegation given to their respective metropoles.

ART. 8.—In polyethnic States the right of the minorities to take part in the administration of the localities they inhabit, to practice their religion and to use their national language is formally guaranteed.

ART. 9.—States have the right to protest separately or collectively against acts done by one of them, infringing morals, equity and right, and to suggest or take measures deemed useful to put an end to these facts.

ART. 10.—The States have the special right of accrediting collectively a Council of Management near the State which causes prejudice to the citizens of other States by defective administration of its finances, which permits or organizes the slaughter of its own citizens, or which, by its incapacity to maintain order, endangers life and legitimate property of foreigners.

ART. 11.—The exploitation of the globe is managed by the States in the collective interest of men, and so as to facilitate and de-

velop to the utmost the exchange of raw materials and of manufactured products.

ART. 12.—The sea is free and open without hindrance to the navigation of all peoples. It is placed under the collective supervision of the States which assume the charge of guaranteeing at a common expense the security of passenger and freight traffic and of looking after the observance by marines of uniform regulations.

ART. 13.—All waterways of whatever kind, accessible to seagoing vessels, are open without exception to the free navigation of all peoples.

ART. 14.—The territories of all colonies shall be open, without differential treatment, to the commerce of all nations. The only taxes to be paid shall be raised to compensate expenses useful to the traffic.

ART. 15.—Custom duties can have only a fiscal and transitory character. The States will endeavor to set up a custom union, preparatory to the adoption of free trade.

ART. 16.—Relations between the States are controlled by the same principles of right, equity and morals as those which control relations between individuals.

ART. 17.—Conventions freely concluded between States are binding upon them as long as they are in force. They may be broken, except through an express clause to the contrary, only by the consent of all the signatories.

ART. 18.—Every potestative clause, which permits to any or to each of the contracting States to decide in a sovereign manner whether a convention is partly or completely applicable to a given case, shall be considered as void.

ART. 19.—Every secret treaty is void and does not bind the States in whose names it was concluded. A treaty is valid only if it is negotiated with the full knowledge of the direct representatives of the peoples interested and if it has obtained the public assent of these representatives.

ART. 20.—The States prohibit the conclusion, between two or more of them, of political or military, defensive or offensive alliances.

ART. 21.—All conflicts between States shall be settled in an amicable or contentious manner.

ART. 22.—No State has the right to have recourse to force without the consent and the co-operation of the other States and only as a judicial sanction or coercion.

ART. 23.—A State which is attacked, outside of the conditions conventionally and collectively established by the States, has a right of legitimate defense. The other States are obliged to participate in this defense and to make it efficacious.

ART. 24.—The States shall not have recourse to force as a means of sanction, coercion or defense before having exhausted all moral, political and economic means of constraint.

ART. 25.—The States are equal, whatever may be the extent of their territory or the importance of their population. Equal respect is assured to the name, flag, seal, blazon and device adopted by each State.

ART. 26.—Foreigners enjoy in all States the liberties and rights guaranteed to nationals. The States proclaim that these liberties and rights essentially include individual liberty and security, inviolability of domicile and property, freedom of conscience, freedom of speech, inviolability of correspondence, freedom of association, freedom of religion. Restrictions may, however, be enacted in respect to the enjoyment of certain rights of elective franchise and of eligibility.

ART. 27.—Neither race, nationality, language, nor religious, philosophical or social convictions may be used as a basis on which to exclude or to expel foreigners.

Nevertheless the States may agree on regulations to be applied to the abnormal and amoral, the insane, infected patients, professional beggars and vagrants, persons who have been convicted and all other categories of undesirable persons.

They will also establish common regulations in matters of change of nationality and may agree upon general measures relating to the annual or absolute number of immigrants admitted on the territory of each State or to their distribution thereupon.

First Title

CONFERENCE OF STATES

Art. 28.—The delegates of the States meet, once in two years at least, in a Conference whose place of meeting shall be fixed at the last sitting of the previous Conference. In default of such a decision, the session shall take place at The Hague. The Conference will automatically meet, without special convocation, on the eighteenth of May.

The States pledge themselves, when the Conference meets on their territory, to place at its disposal the desired quarters and personnel.

Art. 29.—Each State is represented at the Conference by a mission composed of an unlimited number of delegates which it shall be allowed to appoint in its own way. It is, however, recommended that the number of delegates should at least be equal to the number of Commissions requisite to the fufilment of the work of each Conference and that they should be chosen, according to their aptitudes, by the representative bodies of the various States from among the most competent personages of each country.

Art. 30.—The missions may include titular, technical and substitute delegates. The States may during the sessions modify the composition of their respective missions. All notifications respecting the appointment of delegates shall be made to the Permanent International Secretaryship and shall be forwarded thereto six months before each Conference. The Permanent International Secretaryship shall prepare a list of the delegates and notify the same to all the States three months before each session.

Art. 31.—Each State disposes of only one vote. This vote shall be cast in each Commission by the delegate specially appointed to this effect by each mission and in plenary sittings by the chief of the mission or another person appointed by him.

Art. 32.—The solemn opening sitting of each Conference shall take place under the presidency of the chief of the State on whose territory it meets. It shall take place in the presence

of the representatives of the authorities of this State and the members of the diplomatic body accredited to it.

The public and the press, either national or foreign, shall be allowed to assist at this ceremony as well as at subsequent plenary sittings.

ART. 33.—At the time of the opening session, the Conference shall proceed, by acclamation or by secret ballot if it is demanded by at least six States, to the appointment of its Bureau composed of a President, two Vice-Presidents, two general Secretaries and as many Secretaries as there shall be Commissions. Each State shall be represented in the Bureau by not more than one member.

ART. 34.—The Conference, on the proposition of the Bureau, determines the number of the Commissions and appoints their Presidents, Vice-Presidents and Secretaries.

A project of regulations for the conduct of its proceedings shall be presented by the Bureau for adoption by the Conference. These regulations shall include provisions to secure instant, complete and analytic publication of the debates of the plenary sessions, as well as of Commission sessions.

ART. 35.—The resolutions of the Conference are taken in the form of conventions and declarations. It may also express wishes.

The unanimous adoption of a convention by the States represented shall incorporate its provisions into positive international law.

It shall, however, be allowed to a majority of States to conclude between themselves, during the session of a Conference, a convention which has not obtained a unanimous assent. Such a convention shall always be open to the subsequent adhesion of the dissenting States.

ART. 36.—There shall be instituted at common cost by the States, at The Hague, a Permanent International Secretaryship. This Secretaryship shall have the mission of preserving the original conventions adopted by the various Conferences; of receiving and publishing ratifications, adhesions and denunciations of these Conventions; of registering preliminary propositions made by the States or by their Permanent National Com-

mittees; of arranging material preparation for the proceedings of each Conference and of the International Preparatory Committee. It may in addition be intrusted by the various Conferences with the execution of the decisions taken. It shall also look after the complete and analytical publication of their proceedings.

ART. 37.—The Permanent International Secretaryship is placed under the control of the International Administrative Council, which will appoint its personnel, fix its annual budget and formulate its organic regulations. Its budget will include the expenses required for the sessions of the International Preparatory Committee.

ART. 38.—The States pledge themselves to constitute Permanent National Committees intrusted with the prosecution and the promotion of researches and studies concerning the questions to be placed on the order of the day of the future Conferences. The results realized by these Committees or through their intervention shall be communicated by each State to all the other States, as well as to the Permanent International Secretaryship, at least one year before the meeting of the next Conference.

ART. 39.—The International Preparatory Committee meets at least one year before the opening of each Conference in order to examine the various propositions made by the States, to coordinate and harmonize them. This Committee is composed of delegates appointed, one for each State, from the members of their Permanent National Committees. This choice shall be made by the States as soon as they shall have appointed their National Committees, and shall be notified to the Permanent International Secretaryship, which shall draw up a list to be transmitted to all of the States and to the members of the International Committee. It shall invite them to come immediately into touch with one another through it.

ART. 40.—The International Preparatory Committee shall itself formulate its organic regulations. The traveling expenses of each of its members shall be at the charge of the State which appointed them.

The General Report to be made by the Committee shall be prepared, printed and forwarded to each State, six months at

least before each Conference, through the diplomatic agents accredited to the government of the Netherlands. It will be forwarded by registered mail to the States which are not represented near this government.

ART. 41.—The right of initiative belongs to each of the missions which takes part in a Conference. This right is exercised by them at any plenary sitting, which will take under consideration the propositions made and shall decide if they ought to be referred to one of the Commissions, to the International Preparatory Committee for immediate report, or to the next Conference.

The International Preparatory Committee while in session also enjoys the right of initiative and shall include its propositions in its General Report.

ART. 42.—The International Preparatory Committee shall form, with the editing Commission of each Conference, a Consultative Council of Codification. This Council shall especially fulfill the mission of co-ordinating the texts of the various Conventions and of embodying them in the body of provisions which the States shall have agreed upon during the successive Conferences.

ART. 43.—A right of petition is granted to International Associations enjoying a legal status for all matters susceptible of legislative unification or for conventional, juridical or administrative provisions. This right of petition shall be exercised through the Permanent International Secretaryship.

The petitions shall be transmitted for advice to the International Preparatory Committee. Report shall be made to each Conference at a plenary sitting on each petition and on the action which it is proposed to the Conference to take on it.

SECOND TITLE

JUDICIAL ORGANIZATION

ART. 44.—In order to secure the peaceful settlement of international disputes, the States establish an international judicial organization. This organization includes a triple jurisdiction, amicable, arbitral and contentious.

ART. 45.—Amicable jurisdiction includes Good Offices and Mediation, the International Commissions of Inquiry and the International Council of Conciliation. There are established a Permanent Court of Arbitration and an International Court of Justice.

ART. 46.—Considered as international disputes are those which occur between States, between States and citizens of other States, and between citizens of two or more States.

The States reserve the right to submit to an arbitral or contentious jurisdiction the disputes of the two last classes only in case of appeal or cassation.

ART. 47.—The States may, by a general or special stipulation, agree to which of the various jurisdictional modes they wish to give preference.

ART. 48.—When contending States are unable to agree upon a special jurisdictional mode, there will be secured to the most diligent State a mode of procedure in order to submit the dispute to the jurisdiction of its choice.

ART. 49.—Access to the amicable and the arbitral jurisdictions is open only to the States. Access to the contentious jurisdiction is open to the States and their citizens.

ART. 50.—The States consider it their duty, if an acute conflict threatens to arise between two or more of them, to remind such States that the International Judicature is open to them. Consequently the fact of so reminding the States at variance can only be regarded as in the nature of good offices.

ART. 51.—If a question of law to be decided is covered by a convention in force between the States which are themselves or whose subjects or citizens are parties to the proceedings, the competent jurisdiction is to be governed by the provisions of the said convention. Otherwise it shall apply the rules of international law. If no generally recognized rules exist, the competent jurisdiction shall give judgment in accordance with the general principles of justice and equity.

ART. 52.—The States pledge themselves to submit in good faith to the decisions of the competent jurisdictions and to carry them out with the least possible delay.

ART. 53.—The International Judicature has its seat at The

Hague. The International Court of Justice and the International Council of Conciliation cannot transfer their seat elsewhere except in circumstances beyond their control.

The States, however, reserve the right to fix elsewhere the seat of a Commission of Inquiry or of an Arbitral Tribunal, if special circumstances render such a step necessary. The seat once fixed may not, except in circumstances beyond their control, be transferred elsewhere by the commissioners or the arbitrators, without the consent of the parties.

ART. 54.—There is created, at the seat of the International Judicature, an International Court Office, placed under the control of the International Administrative Council, which appoints its officers and employees, determines its annual budget and formulates its organic regulations.

ART. 55.—A Permanent Judicial Delegation is instituted, made up of three titular and three substitute judges chosen annually from and by the International Court of Justice and intrusted with the task of acting in cases of urgency or at the request of the parties, as well as on the admissibility of appeals by private persons against decisions of national tribunals.

ART. 56.—The International Court of Justice shall meet each year in General Assembly to deliberate on improvements to be introduced in the International Judicial Organization. The propositions drafted by it shall be transmitted, by the interposition of the Permanent International Secretaryship, to the International Preparatory Committee to be submitted by it to the next Conference.

THIRD TITLE

INTERNATIONAL ADMINISTRATION

ART. 57.—The States confirm the conventions concluded by all or several of them with the aim of securing their collective collaboration in endeavors and services of international interest, and pledge themselves to adhere to those conventions which they have not already signed.

ART. 58.—The States shall consult together with the object of

multiplying, with the shortest delay possible, similar endeavors and services in all domains of human activity.

In the elaboration of these endeavors and services a special appeal shall be made for the collaboration of international organizations of private initiative.

ART. 59.—An International Administrative Bureau is established to co-ordinate the activities of the various organisms established by the above mentioned conventions, to facilitate the fulfilment of their task and to promote the creation of new organisms. Each State shall appoint a service intrusted with its international administrative relations to be represented by one delegate in the International Administrative Bureau.

ART. 60.—The International Administrative Bureau deliberates, the delegate of the State on the territory of which it meets presiding. It formulates its bylaws and organizes the permanent services it deems necessary to the fulfilment of its mission. It appoints their remunerated employees.

It may institute departments more specially intrusted with the management of connected services; it is however agreed that the autonomy of the international organizations will be respected as largely as possible.

There shall be established, near the various services or departments, High Consultative Councils, composed of delegates appointed by the free international groups interested in the work performed by those services or departments.

The seat of the International Administrative Bureau is at Brussels. The traveling expenses and the eventual indemnities granted to the delegates are at the charge of their respective governments.

ART. 61.—A Permanent Administrative Council is appointed to control the operations of the International Permanent Secretaryship and of the International Court Office. It is composed of the diplomatic representatives accredited to The Hague and of the Netherlands' Minister for Foreign Affairs. It meets, the latter or in his absence the oldest member acting as president.

The Council settles its rules of procedure. It decides all questions of mere administration which may arise with regard

to the business of the Conference of States and of the International Judicature.

The Council's deliberations are valid if nine members are present. It may intrust to some of its members the daily administration, and it may be aided by salaried employees.

The Council communicates to the States the regulations adopted by it. It furnishes them with an annual report on the labors accomplished under its control and the expenditures made.

ART. 62.—The States participate in the preparation of an International Budget intended to cover the expenses of the various international institutions, official and private. This budget is biennial and is adopted during each session of the Conference of States.

It shall be supported by annual payments made by the States in the proportion fixed for the International Bureau of the Universal Postal Union. These payments shall be made during the month of January.

The expenses agreed upon by special conventions for the management of international institutions shall be embodied in the International Budget and borne by all the States.

ART. 63.—An International Financial Committee is intrusted with making out the International Budget and its reference to the States with an explanatory statement three months before each session of the Conference of States. This Committee is composed of one delegate for each State selected from the high officers in the financial service. A State may intrust its representation to a delegate of another State; no delegate, however, may represent more than two States.

The International Financial Committee is intrusted with the high direction of the International Treasury; it appoints its personnel, fixes its expenses and formulates its organic regulations.

It shall meet at least once a year at the seat of the International Treasury and inspect the operations thereof. These operations are conducted under the supervision of the financial controlling organization of the State where the International

Treasury is situated; this organization shall have charge of validating its orders of payment.

Fourth Title

General and transitory provisions

Art. 64.—The functions of judge of the International Court of Justice, those of clerk of the International Court Office and of the Permanent International Secretaryship are incompatible with any national functions whatever.

The persons appointed to these functions are denationalized during their incumbency and are placed under the collective safeguard of the States. As to the preservation of their civil interests they may, however, appeal to the legislation of their native country.

Art. 65.—Delegates to the Conference of States, members of the amicable and arbitral jurisdictions, of the International Administrative Bureau and of the International Financial Committee, during the continuance of their mandate, enjoy the privilege of exterritoriality.

Art. 66.—Neither international titles nor orders exist. During the continuance of their mandate, the persons enumerated in the previous article shall be designated only by the denomination of their international functions.

Art. 67.—The States shall create a free international traveling ticket in behalf of the delegates, officers and members of the various international institutions and of a person in their company. The postal franchise shall also be granted to them for their official correspondence. The free international institutions may benefit by these advantages through the medium of the Permanent International Secretaryship.

Art. 68.—At the request of five States revision may be undertaken of one or several designated provisions of the present convention or of the complementary conventions; the same number of States may also propose the introduction of new provisions.

This request shall reach the Permanent International Secretaryship at least one year before the next meeting of the Con-

ference of States; it shall be forwarded immediately to the other States and to the International Preparatory Committee.

The request shall include an explanatory note and shall be submitted to the Conference of States with a report of the International Preparatory Committee.

A proposed modification shall be adopted only if it is accepted by four-fifths of the States.

ART. 69.—Complementary and regulatory conventions shall be immediately concluded by the States in order to secure the realization of the provisions of the present convention.

Their subjects shall be: the international judicial organization; the methods of constraint and the use of armed force; the procedure to be followed by national communities in order to secure their autonomy or the redress of their grievances; the regulation of emigration; the establishment of councils of management and the protection of backward populations; the colonial régime; the customs régime.

ART. 70.—In the above-mentioned conventions are to be embodied, in proper terms, the provisions of the present convention containing the principles relating to these conventions.

ART. 71.—The States pledge themselves to include in their penal laws provisions intended to inflict severe penalties on those who, by lies, calumnies, insinuations and insults, attempt to disparage foreign peoples or to excite them one against another.

The States afford to their respective diplomatic and consular agents the right to impeach the offenders and if necessary to summon them before the competent jurisdictions.

ART. 72.—The States pledge themselves, if they have not done so already, to change the names of their offices, secretaryships or ministries of foreign affairs, war and navy; these will be respectively named offices, secretaryships or ministries of international relations, national defense and naval defense.

COMPLEMENTARY CONVENTIONS

1. Judiciary Organization
2. Sanction, Coercion and Defense
3. Circulation of Men

I

JUDICIARY ORGANIZATION

EXPLANATORY NOTE

1. The following complementary convention combines, in one co-ordinated whole, the provisions of the Convention for the Pacific Settlement of International Disputes and those of the Conventions concerning the International Prize Court and the Court of Arbitral Justice as they were drafted by the Peace Conference of 1907. It is largely a reproduction of a project of co-ordination we prepared for the Interparliamentary Conference to be held at Stockholm in 1914. The only alterations we have introduced in this project were made in order to apply the principle that all disputes ought to be settled in an amicable or contentious way. Besides, we have completed this project by adding articles devoted to the Permanent Commissions of Inquiry and to the International Council of Conciliation.

To make easier comparison between the texts of the original conventions and the text we drafted we have printed in italics all the new provisions and replaced by dots the suppressed parts of some articles.

To a similar end a special table brings into relation the articles of the various conventions and those of our project.

2. The proposed convention will be subdivided as follows:

FIRST TITLE

AMICABLE JURISDICTION

Chapter I

Good Offices and Mediation

Chapter II

Commissions of Inquiry

Chapter III
International Council of Conciliation

SECOND TITLE
Arbitral Jurisdiction

THIRD TITLE
Contentious Jurisdiction

FOURTH TITLE
International Procedure

FIFTH TITLE
General Provisions

A preliminary title reproduces, in accordance with Art. 69 of the organic convention of the Society of States, the articles devoted in it to the judicial organization.

3. We have rallied to the principle that the International Court of Justice is competent for all conflicts having a judiciary character. This jurisdiction will be subdivided into chambers according to the needs which practice will disclose; it will be necessary to allow the Court to adopt in this respect such measures and regulations as circumstances will point out as the more fit.

The most delicate question, however, is that relating to the choice of the judges. It is generally known that it was the impossibility for the delegates to the second Peace Conference to come to a satisfactory solution which caused the establishment of the Court of Arbitral Justice to fail. It was mainly because the States, called by themselves the Great Powers, claimed the right each to elect a permanent judge at least to the Court, that all the other States raised a unanimous opposition.

There is no doubt that the principle of equality between States ought to be respected and we think that, by the system advocated by us, satisfaction is given to that legitimate revendication. By this system each State nominates as many candidates as there are judges composing the Court; one-third at least of these candidates ought to be citizens of another State than the State by which they are nominated. Consequently the most distinguished jurists of the world will be necessarily placed by a great number

of States on the lists of their candidates. All the States will subsequently take part in the balloting with an equal voting power.

4. What also characterizes our project is the fact that we have placed under one title the whole international procedure. In the various conventions, agreed upon by the Peace Conferences, numerous assimilations have already been made; besides, a large extension was given in 1907 to the hearing of witnesses by the International Commissions of Inquiry. We have found that it was very easy to co-ordinate these various provisions and to apply them within all jurisdictions.

5. The constitution of the International Council of Conciliation and its working have called for more special attention. The idea of creating a new institution, which would be neither a judiciary body, properly speaking, nor a diplomatic gathering in the traditional sense of this expression, is an entirely new one which met, in the most various minds, with all the more compliance because the conception of such an institution was more vague and undefined. No clear and detailed formula has been proposed till now. Would it be well to pattern after the Berlin Conference of 1878, the Algeciras Conference or the London Conference of 1913? The too-exclusively diplomatic formation of these assemblies and the direct interests of most of the represented States in the solutions to be agreed upon have deprived their deliberations of the impartiality which ought, in our opinion, to prevail in an International Council of Conciliation.

The articles we have devoted to this new institution are explanatory in themselves. They are a first attempt to solve the ticklish problem before which the representatives of the States will be placed. It would be necessary that others should tackle it and that, with their aid, a project as perfect as possible should be submitted to the members of the next Conference of States.

6. The English text we have used in drafting the proposed convention is the translation of the Final Act of the Second Peace Conference as it was published in a blue paper of the

British Government. This translation has no international official weight and is not always adequate. But we think it is useless to introduce rectifications which it would be necessary to explain. Also many provisions of secondary importance should

TABLE OF CONCORDANCE

Court of Arbitral Justice		Pacific Settlement of International Disputes				International Prize Court	
1	56	1	—	45	51	1	—
2,[1]	57	2	12	46,[1-3]	55	2	—
2,[2]	—	3	13	46,[4]	127	3	—
3	58	4	14	47	41	4	72
4	59	5	15	48	8	5	73
5,[1]	127	6	16	49	118	6,[1]	74
5,[2]	60	7	—	50	119	6,[2]	—
6,[1]	120	8	17	51	117	7,[1-3]	9
6,[2]	61	9	18	52	52	7,[4-5]	—
6,[3]	—	10	19	53	53	8	—
7	61	11,[1-2]	11	54	54	9	10
8	62	11,[3]	83	55	46	10	—
9	63	12	19	56	47	11	—
10	64	13	21	57	48	12	59
11	11	14	84	58	49	13,[1]	127
12	118	15	69	59	50	13,[2]	60
13	69	16	22	60	11	14	—
14	—	17	87	61	83	15	—
15	125	18	87	62	84	16	—
16	—	19,[1]	89	63	96	17	—
17	—	19,[2]	88	64	96	18	—
18	121	20	93	65	97	19	62
19	122	21	94	66	108	20,[1-2]	63
20	122	22	100	67	98	20,[3]	64
21	7	23	104	68	99	21	11
22	—	24	86	69	100	22	118

TABLE OF CONCORDANCE (*Continued*)

Court of Arbitral Justice	Pacific Settlement of International Disputes			International Prize Court	
23	83	25	89	70	104	23	69
24	96	26	90	71	101	24	83
25	86	27	91	72	102	25	84
26	108	28	92	73	103	26	85
27	110	29	95	74	103	27	86
28	111	30	110	75	104	28,[1]	75
29	113	31	108	76	86	28,[2]	76
30	123	32	109	77	109	29	80
31	119	33	24	78	110	30	—
32	68	34	112	79	111	31	77
33	117	35	25	80	112	32	78
		36	113	81	112	33	79
		37,[1]	38	82	114	34	96
		37,[2]	10	83	115	35,[1-2]	98
		38	39	84	116	35,[3]	106
		39	40	85	113	36	106
		40	—	86	—	37	107
		41	43	87	—	38	108
		42	—	88	—	39	108
		43,[1]	11	89	—	40	82
		43,[2]	69	90	—	41	107
		43,[3-4]	42			42	—
		44,[1-5]	44			43	110
		44,[6-7]	45			44	111
						45	112
						46	113
						47	119
						48	120
						49	68
						50	117
						51	7

be modified, but we fear that, in trying to draft a more elaborate scheme, sight would be lost of the most important changes which are to be realized first. We reserve our right to devote a subsequent study to the modifications, improvements and simplifications which could and should be adopted by the next Conference of States in order to secure to the world a Judicial Organization as perfect as possible.

Some explanations are necessary about the articles which are not included in our project:

Court of Arbitral Justice, Art. 2, par. 2, and Art. 16; *International Prize Court,* Arts. 10, 11, 14–18.—These provisions regulate the nomination and rotation of the judges. By the fact that we have adopted the system of one court subdivided into chambers, these provisions of course are to be withdrawn.

Court of Arbitral Justice, Art. 6, par. 3.—This provision applies a general principle which it seemed useless for us to quote.

Court of Arbitral Justice, Art. 14.—This article rules the annual sessions of the court; in our system the court is always in session.

Court of Arbitral Justice, Art. 17; *Pacific Settlement,* Arts. 40, 42; *International Prize Court,* Art. 42.—These provisions regulate the limited competency of the various courts; in our system all disputes are to be settled by one or another of the jurisdictional modes included in our project.

Court of Arbitral Justice, Art. 22.—This article provides for the application to this court of the procedure to be used by the Permanent Court of Arbitration. This assimilation is precisely the main aim of our project.

Pacific Settlement, Arts. 86–90.—Provisions which provide for a summary procedure of arbitration which seems to us without practical value. Arbitration, as it is agreed upon, is itself very summary; in fact, the proposed procedure was never applied. The provision (Art. 121), by which the Permanent Judicial Delegation may sit as an Arbitration Tribunal, will give a similar opportunity to settle rapidly disputes of less importance.

International Prize Court, Arts. 1–3, Art. 7, pars. 4 and 5, Art. 8.—Provisions which rule the matter of prizes and cannot be introduced in a project as general as ours. In fact, Arts. 1–3

apply principles laid down in Arts. 4 and 7 of our project.

International Prize Court, Art. 6, par. 2, and Art. 30.—These provisions allude to a principle which could be applied to other disputes, but it is not a question so important as to be included in a general project.

International Prize Court, Art. 42.—This article consecrates the right of free appreciation by the judges of evidence and arguments. To proclaim such an obvious principle would infer a doubt about its application in international differences.

Complementary Convention for the Amicable and Judiciary Settlement of International Disputes

PRELIMINARY TITLE

ART. 1.—*All conflicts between States shall be settled in an amicable or contentious manner* [M. C.,[1] Art. 21].

ART. 2.—*In order to secure the peaceful settlement of international disputes, the States establish an international judicial organization. This organization includes a triple jurisdiction, amicable, arbitral and contentious* [M. C., Art. 44].

ART. 3.—*Amicable jurisdiction includes Good Offices and Mediation, the International Commissions of Inquiry and the International Council of Conciliation. There are established a Permanent Court of Arbitration and an International Court of Justice* [M. C., Art. 45].

ART. 4.—*Considered as international disputes are those which occur between States, between States and citizens of other States, and between citizens of two or more States.*

The States reserve the right to submit to an arbitral or contentious jurisdiction the disputes of the two last classes only in case of appeal or cassation [M. C., Art. 46].

ART. 5.—*The States may, by a general or special stipulation, agree to which of the various jurisdictional modes they wish to give preference* [M. C., Art. 47].

ART. 6.—*When contending States are unable to agree upon a special jurisdictional mode there will be secured to the most diligent State a mode of procedure in order to submit the dispute to the jurisdiction of its choice* [M. C., Art. 48].

ART. 7.—*Access to the amicable and arbitral jurisdictions is open only to the States. Access to the contentious jurisdiction is open to the*

States and their citizens. (C. J.,[1] Art. 21, C. P., Art. 51) [M. C., Art. 49].

ART. 8.—The *States* consider it their duty, if an acute conflict threatens to arise between two or more of them, to remind such *States* that the *International Judicature* is open to them. Consequently . . . the fact of so reminding the *States* at variance . . . can only be regarded as in the nature of good offices (R. C., Art. 48) [M. C., Art. 50].

ART. 9.—If a question of law to be decided is covered by a convention in force between the *States* which are themselves or whose subjects or citizens are parties to the proceedings, the *competent jurisdiction* is to be governed by the provisions of the said convention. Otherwise it shall apply the rules of international law. If no generally recognized rules exist, the competent jurisdiction shall give judgment in accordance with the general principles of justice and equity (C. P., Art. 7, pars. 1 and 2) [M. C., Art. 51].

The above provisions apply equally to questions relating to the order and mode of proof (C. P., Art. 7, par. 3).

ART. 10.—The *States* pledge themselves to submit in good faith to the decisions of the *competent jurisdiction* and to carry them out with the least possible delay (R. C., Art. 37, par. 2, C. P., Art. 9) [M. C., Art. 52].

ART. 11.—The *International Judicature* has its seat at The Hague. The *International* Court of Justice *and the International Council of Conciliation* cannot transfer their seat elsewhere except in circumstances beyond their control.

The States, however, reserve the right to fix elsewhere the seat of a Commission of Inquiry or of an Arbitral Tribunal, if circumstances render such a step necessary. The seat once fixed may not, except in circumstances beyond their control, be transferred elsewhere *by the commissioners or the arbitrators* without the consent of the parties (C. J., Art. 11; C. P., Art. 21; R. C., Art. 11, pars. 1 and 2, Art. 43, par. 1, and Art. 60) [M. C., Art. 53].

[1] M. C. indicates Magnissima Charta; C. J., Court of Arbitral Justice; C. P., International Court of Prize; and R. C., Pacific Settlement of International Disputes.

FIRST TITLE

Amicable Jurisdiction

Chapter I

GOOD OFFICES AND MEDIATION

ART. 12.—In case of serious disagreement or dispute, . . . the *States* agree to have recourse . . . to the good offices or mediation of one or more friendly States (R. C., Art. 2).

ART. 13.—Independently of this recourse, the *States* deem it expedient and desirable that one or more *States,* strangers to the dispute, should, on their own initiative *and in any circumstance,* . . . offer their good offices to the States at variance . . .

The exercise of this right can never be regarded by either of the contending parties as an unfriendly act (R. C., Art 3).

ART. 14.—The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance (R. C., Art. 4).

ART. 15.—The duties of the mediator are at an end when once it is declared, either by one of the contending parties or by the mediator himself, that the means of reconciliation proposed by him are not accepted (R. C., Art. 5).

ART. 16.—Good offices and mediation undertaken either at the request of the contending parties or on the initiative of *States* strangers to the dispute have exclusively the character of advice and never have binding force (R. C., Art. 6).

ART. 17.—The contracting *States* are agreed in recommending the application . . . of a special mediation in the following form.

In case of a serious difference endangering peace the States at variance choose respectively a *State* to which they intrust the mission of entering into direct communication with the *State* chosen on the other side. . . .

For the period of this mandate, the term of which, in default of agreement to the contrary, may not exceed thirty days, the contending States cease from all direct communication on the subject of the dispute, which is regarded as deferred exclusively to the mediating *States.* These *States* shall use their best efforts to settle the dispute . . . (R. C., Art. 8).

Chapter II

INTERNATIONAL COMMISSIONS OF INQUIRY

ART. 18.—In disputes of an international nature . . . , arising from a difference of opinion on points of fact *or of right,* the *States* deem it expedient and desirable that the parties, who have not been able to come to an agreement by means of diplomacy, should . . . *have recourse to an* International Commission of Inquiry, to facilitate a solution of these disputes by elucidating the points of fact *or of right* by means of an impartial and conscientious investigation (R. C., Art. 9).

International Commissions of Inquiry are occasional or permanent.

ART. 19.—*Occasional* International Commissions of Inquiry are constituted by special agreement between the contending parties.

The Inquiry Convention defines the *points* to be examined, it determines the manner and period within which the Commission is to be formed and the extent of the powers of the commissioners.

If the parties consider it necessary to appoint assessors, the Inquiry Convention shall determine the mode of their selection and the extent of their powers (R. C., Art. 10).

In default of agreement to the contrary, Commissions of Inquiry shall be formed in the manner determined by Articles 48 to 51 of the present Convention (R. C., Art. 12).

ART. 20.—*Permanent International Commissions of Inquiry are constituted in advance by the States acting two by two for the case of a dispute of any nature whatsoever arising between them. They shall each be composed of five members; each of the States concerned shall appoint one member from its own citizens and another from the citizens of a third State; the fifth member, of a nationality different from that of the other members, shall be chosen by common agreement between the two States.*

The signatory States pledge themselves to constitute such Commissions with the least possible delay.

The Permanent International Commissions of Inquiry may act upon their own initiative, in which case the State concerned shall facilitate their investigations as thoroughly as possible.[2]

ART. 21.—Should one of the commissioners or one of the assessors, should there be any, either die, resign or be unable for any reason what-

[2] This provision, as well as those contained in Article 23, is taken from the numerous conventions between the United States of America and more than thirty States, concluded upon the initiative of Mr. William J. Bryan, Secretary of State.

ever to act, the same procedure is followed in filling his place which was followed in appointing him (R. C., Art. 13).

ART. 22.—If the Commission meets elsewhere than at The Hague, it appoints a secretary general, whose office serves as registry. It is the function of the registry, under the control of the president, to make the necessary arrangements for the sittings of the Commission, the preparation of the minutes and, while the inquiry lasts, for the custody of the archives, which shall subsequently be transferred to the International *Court Office* at The Hague (R. C., Art. 16).

ART. 23.—*The report of each Commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the States concerned shall extend the time by mutual agreement. The report shall be prepared in triplicate, one copy shall be presented to each of the parties and the third filed in the archives of the International Court Office at The Hague.*

ART. 24.—The report is signed by all the members of the Commission. If one of the members refuses to sign, the fact is mentioned, but the validity of the report is not affected (R. C., Art. 33).

ART. 25.—The report of the Commission, being limited to a finding of fact *or of law*, has in no way the character of an arbitral award. It leaves to the parties entire freedom as to the effect to be given to the finding (R. C., Art. 35).

Chapter III

International Council of Conciliation

ART. 26.—*An International Council of Conciliation is constituted, composed of representatives of all the States. The States may be represented by three delegates if their population exceeds twenty millions, by two delegates if it numbers from three to twenty millions, by one delegate if it is below three millions but is not less than five hundred thousand.*[3]

[3] The votes would be shared as follows:

Argentina	7,000,000	2	Costa Rica	400,000	—
Austria-Hungary	52,000,000	3	Cuba	2,500,000	1
Belgium	7,500,000	2	Denmark	2,800,000	1
Bolivia	2,000,000	1	Ecuador	1,500,000	1
Brazil	24,500,000	3	France	40,000,000	3
Bulgaria	4,500,000	2	Germany	65,000,000	3
Chile	3,500,000	2	Great Britain	46,000,000	3
China	439,000,000	3	Greece	3,000,000	2
Colombia	5,000,000	2	Guatemala	1,900,000	1

ART. 27.—*The delegates shall be chosen from among persons specially competent in political. historical and economical sciences.*

ART. 28.—*The International Council of Conciliation has the mission of conciliating and adjusting all differences occurring between States and not having a strictly judiciary character, either referred to it by one or another international jurisdiction, or directly submitted to it by a common agreement of the States in variance.*

The States pledge themselves to bring before it all differences they consider as unfit to be submitted to one of the other jurisdictions instituted by the present convention.

The International Council of Conciliation is specially competent to settle differences occurring about the modification or revision of conventions and treaties other than those agreed upon by the Conference of States, as well as requests made in order to secure or guarantee the independence of national communities or the rights of populations in polyethnic States.

ART. 29.—*The International Council of Conciliation meets in plenary or partial assemblies. The partial assemblies are those composed only of the representatives of the States of one continent, or of the States bordering the same ocean or sea, or of the signatory States of a single convention, or of the States in possession of colonies.*

The States, whose representatives would not normally be members of a partial assembly, may nevertheless take part in it, if these States are of the opinion that they are concerned.

ART. 30.—*The International Council of Conciliation meets at least*

Haiti	2,500,000	1	Persia	6,000,000	2
Honduras	600,000	1	Portugal	6,000,000	2
Italy	35,000,000	3	Rumania	7,500,000	2
Japan	53,000,000	3	Russia	173,000,000	3
Liberia	1,500,000	1	San Domingo	750,000	1
Luxemburg	260,000	—	Salvador	1,200,000	1
Mexico	16,000,000	2	Serbia	3,000,000	2
Monaco	20,000	—	Siam	8,200,000	2
Montenegro	250,000	—	Spain	20,000,000	3
Netherlands	5,700,000	2	Sweden	5,500,000	2
Nicaragua	600,000	1	Switzerland	3,800,000	2
Norway	2,500,000	1	Turkey	20,500,000	3
Panama	400,000	—	United States	98,500,000	3
Paraguay	1,000,000	1	Uruguay	1,200,000	1
Peru	4,600,000	2	Venezuela	2,600,000	1

12 States with three votes 36
16 States with two votes ..... 32 } 83
15 States with one vote 15

once a year in a plenary session in order to appoint its Bureau composed of a president, two vice-presidents and two secretaries; they shall be citizens of different States. The representatives of a State shall be ineligible to the presidency during the ten years following the election of one of them to this function; the same rule shall be applied to the other functions of the Bureau, but the ineligibility period shall be reduced to five years.

ART. 31.—*The International Council of Conciliation has the right to delegate its powers to some of its members, intrusted with the task either of reporting to the plenary assembly or of deciding finally.*

ART. 32.—*The International Council of Conciliation deliberates validly if four-fifths of its members are present. When a solution will have the adhesion of seven-tenths of the States represented and representing at least the half of the whole population of the globe, the States pledge themselves to yield to this solution.*

ART. 33.—*The representatives of the States directly interested in a difference submitted to the International Council of Conciliation shall have only a consultative voice in its deliberations.*

ART. 34.—*The International Council of Conciliation formulates its organic regulations. The International Court Office acts as its administrative agency.*

The members of the Bureau shall permanently reside at The Hague during the continuance of their mandate. At their intervention the International Court Office shall forward the necessary calls and secure the material preparation of the various assemblies.

ART. 35.—*The States pledge themselves to supply the International Council of Conciliation with all information whatsoever able to enlighten it about the difference in which they may be eventually involved.*

ART. 36.—*The members of the International Council of Conciliation are not allowed, during the continuance of their mandate, to fulfill an international or a national function or to receive, from their own government or the government of any other State, any remuneration or honorific acknowledgment.*

ART. 37.—*The traveling expenses of the members of the International Council of Conciliation are at the charge of the States they represent. They may besides receive an indemnity equivalent to the fees or salaries they enjoyed before their appointment.*

SECOND TITLE

Arbitral Jurisdiction

ART. 38.—International Arbitration has for its object the settlement of disputes between States by judges of their choice and on the basis of respect for law (R. C., Art. 37, par. 1).

ART. 39.—In questions of a legal nature and especially in the interpretation or application of international conventions, arbitration is recognized by the States as the most effective and, at the same time, the most equitable means of arranging disputes which diplomacy has failed to settle . . . (R. C., Art. 38).

ART. 40.—The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category (R. C., Art. 39).

ART. 41.—The *International Court Office* is authorized to place its offices and staff at the disposal of the *States* for the use of any special body of arbitrators.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between *non-signatory States,* or between *signatory and non-signatory States,* if the parties are agreed to have recourse to the Court (R. C., Art. 47).

ART. 42.—The *States* undertake to communicate to the *Court Office,* as soon as possible, a duly certified copy of any arbitration agreement arrived at between them and of any award concerning them delivered by a special tribunal.

They likewise undertake to communicate to the *Court Office* the laws, regulations and documents indicating the execution, in due course, of the awards given by the Court (R. C., Art. 43, pars. 3 and 4.)

ART. 43.—With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the *States* undertake to maintain a Permanent Court of Arbitration . . . accessible at all times, and acting, in default of agreement to the contrary between the parties, in accordance with the rules of procedure inserted in the present Convention (R. C., Art. 41).

ART. 44.—Each *State* selects four persons at the most, of known competency in questions of international law, of the highest moral reputation and disposed to accept the duties of arbitrator.

Two or more *States* may agree on the selection in common of one or more members. The same person may be selected by different *States.*

The persons thus selected are inscribed, as members of the Court, in a list which shall be notified to all the contracting *States* by the *International Court Office.*

All alteration in the list of arbitrators is brought by the *Court Office* to the knowledge of the States (R. C., Art. 44, pars. 1–5).

ART. 45.—The members of the Court are appointed for a term of six years. Their appointments can be renewed.

Should a member of the Court die or resign, the same procedure is followed in filling his place which was followed in appointing him. In this case the appointment is made for a fresh period of six years (R. C., Art. 44, pars. 6 and 7).

ART. 46.—The duties of arbitrator may be conferred on a single arbitrator or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Convention.

Failing the composition of the Tribunal by direct agreement between the parties, the course referred to in Article 51, paragraphs 2 to 5, is followed (R. C., Art. 55).

ART. 47.—When a . . . Chief of a State is chosen as arbitrator, the arbitration procedure is settled by him (R. C., Art. 56).

ART. 48.—The umpire is *ex-officio* president of the Tribunal. When the Tribunal does not include an umpire, it appoints its own president (R. C., Art. 57).

ART. 49.—When the compromis is settled by a commission, as contemplated in Article 54, and in default of agreement to the contrary, the commission itself shall form the Arbitration Tribunal (R. C., Art. 58).

ART. 50.—Should one of the arbitrators either die, resign or be unable for any reason whatever to act, the same procedure is followed in filling his place which was followed in appointing him (R. C., Art. 59).

ART. 51.—When the *States* wish to have recourse to the Permanent Court for the settlement of a difference which has arisen between them, the arbitrators, called upon to form the tribunal which shall decide this difference, must be chosen from the general list of members of the Court.

Failing the composition of the Arbitration Tribunal by direct agreement between the parties, the following course shall be pursued: each party appoints two arbitrators of whom one only may belong to its own nation or be chosen from among the persons selected by it as members of the Permanent Court. These arbitrators together choose an umpire.

If the votes are equally divided, the choice of the umpire is intrusted to a third *State,* selected by agreement between the parties.

If an agreement is not arrived at on this subject each party selects a different *State* and the choice of the umpire is made in concert by the *States* thus selected.

If, within two months' time, these two *States* cannot come to an agreement, each of them presents two candidates taken from the list of members of the Permanent Court, exclusive of the members selected by the parties and not belonging to the nation of either of them. Which of the candidates thus presented shall be umpire is determined by lot (R. C., Art. 45).

ART. 52.—The *States* which have recourse to arbitration sign a compromis, in which the subject of the dispute is clearly defined, the time allowed for appointing arbitrators, the form, order and time in which the communication referred to in Article 96 must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The compromis likewise defines, if there is occasion for it, the manner of appointing arbitrators, any power which may eventually belong to the Tribunal, the place of meeting, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed (R. C., Art. 52).

ART. 53.—The Permanent Court is competent to settle the compromis, if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is made by only one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:

1. A dispute covered by a general treaty of arbitration concluded or renewed after the present Convention has come into force, and providing for a compromis in all disputes and not either explicitly or implicitly excluding the settlement of the compromis from the competence of the Court. . . .

2. A dispute arising from contract debts claimed from a *State* by another *State* as due to its subjects or citizens, and for settlement of which the offer of arbitration has been accepted. This provision is not applicable if acceptance is subject to the condition that the compromis should be settled in some other way (R. C., Art. 53).

ART. 54.—In the cases contemplated in the preceding article, the compromis shall be settled by a commission consisting of five members selected in the manner laid down in Article 51, pars. 2–5.

The fifth member is *ex-officio* president of the commission (R. C., Art. 54).

ART. 55.—As soon as the Tribunal has been constituted, the parties notify to the *Court Office* their determination to have recourse to the Court, the text of their compromis and the names of the arbitrators.

The *Court Office* communicates without delay to each arbitrator the compromis and the names of the other members of the Tribunal.

The Tribunal assembles at the date fixed by the parties. The *Court Office* makes the necessary arrangements for the meeting (R. C., Art. 46, pars. 1–3).

THIRD TITLE

Contentious Jurisdiction [4]

ART. 56.—The *States* agree to constitute, without derogation to the Permanent Court of Arbitration, an *International* Court of Justice, of free and unrestricted access, *based on the juridical equality of States,* composed of judges representing the various juridical systems of the world, and capable of insuring continuity in *international* jurisprudence (C. J., Art. 1).

ART. 57.—The *International* Court of Justice is composed of judges and deputy judges chosen from persons of the highest moral reputation and all fulfilling conditions qualifying them, in their respective countries, to occupy high legal posts, or as jurists of recognized competence in matters of international law . . . (C. J., Art. 2, par. 1).

ART. 58.—The judges and deputy judges are appointed *for life. The age limit is fixed at seventy-five.*

Should one of the judges die or resign, the vacancy *will be filled, by a majority vote of the acting judges, by co-optation from among the deputy judges. The number of these is completed at the next Conference of States. If the number of deputy judges should be reduced to five or less, an election may take place through the diplomatic channel, at the intervention of the Permanent Administrative Council* (C. J., Art. 3).

ART. 59.—The judges of the *International* Court of Justice are equal among themselves and have precedence according to the date of their appointment. The judge who is senior in point of age takes precedence when the date of appointment is the same.

The deputy judges when acting are in the same position as the

[4] The following provisions are almost wholly taken from the project of a Court of Arbitral Justice adopted in 1907 by the second Peace Conference.

judges. They rank, however, after the latter (C. J., Art. 4; C. P., Art. 12).

ART. 60.—Before taking their seat, the judges and deputy judges shall take an oath, or make a solemn affirmation, before the Permanent Administrative Council, to discharge their duties impartially and conscientiously (C. J., Art. 5, par. 2; C. P., Art. 13, par. 2).

ART. 61.—A judge may not act judicially in any case in which he has, in any way whatever, taken part in the decision of a national tribunal, of a Tribunal of Arbitration, or of a Commission of Inquiry, or has figured in the suit as counsel or advocate for one of the parties, as well as in any case in which himself or one of his family or relatives, in direct or collateral line to the third degree, has a personal interest (C. J., Art. 7, par. 1).

Likewise a judge cannot act when the *State* . . . to which he belongs is one of the parties (C. J., Art. 6, par. 2).

A judge cannot act as agent or advocate before the *International* Court of Justice or the Permanent Court of Arbitration, before a special Tribunal of Arbitration or a Commission of Inquiry, nor act therein for one of the parties in any capacity whatsoever so long as his appointment lasts (C. J., Art. 7, par. 2).

ART. 62.—The Court elects its president and vice-president by an absolute majority of the votes cast. After two ballots, the election is made by a bare majority and, in case the votes are equal, by lot (C. J., Art. 8; C. P., Art. 19).

ART. 63.—The judges of the *International* Court of Justice receive an annual salary of *twenty-five* thousand Netherland florins. This salary is paid at the end of each half year, reckoned from the date on which the Court meets for the first time.

The deputy judge, acting temporarily for a judge, receives the sum of *fifty* florins per diem. They are further entitled to receive a traveling allowance fixed in accordance with the regulations existing in their own country.

The judges arrived at the age limit or resigning by reason of ill health enjoy their full salary.

These emoluments are included in the general expenses of the Court dealt with in Article 119 and are paid through the International *Court Office* . . . (C. J., Art. 9; C. P., Art. 20, pars. 1 and 2).

ART. 64.—The judges may not accept from their own government or from that of any other *State* any remuneration for services connected with their duties in their capacity of members of the Court (C. J., Art. 10; C. P., Art. 20, par. 3).

ART. 65.—*The number of the judges composing the International*

Court of Justice is fixed at fifteen. An equal number of deputy judges is appointed.

ART. 66.—*The judges and deputy judges are elected by secret ballot by the States at a session of the Conference of States. To this effect a list shall be made of all the candidates nominated by at least five States. Each State has the right to nominate as many candidates as there are seats to fill; however, one third at least of the candidates nominated by each State shall be citizens of other States. Each State has an equal elective power.*

The election of the deputy judges shall take place after the election of the acting judges is completed.

To be elected the candidates ought to have obtained at least half of the votes. If candidates, more numerous than the seats to fill, obtain an equal number of votes, the privilege of age shall be applied.

ART. 67.—*There may not be elected, the acting and deputy judges considered as forming all together one judiciary body, more than two candidates belonging to the same nation.*

ART. 68.—The *International* Court *of Justice* draws up its *organic* rules . . . which shall be communicated to the *States.*

These rules shall especially determine the number of chambers to be instituted within the Court and establish between them a regular rotation of the judges.

After the ratification of the present Convention, the Court shall meet as early as possible in order to draw up these rules, to elect the president and the vice-president and to appoint the members of the Delegation (C. J., Art. 32; C. P., Art. 49).

FOURTH TITLE

International Procedure

ART. 69.—*There is created, at the seat of the International Judicature, an International Court Office, placed under the control of the International Administrative Council, which appoints its officers and employees, determines its annual budget and formulates its organic regulations* [M. C., Art. 54].

It shall place its offices and staff at the disposal of the various jurisdictions. It has the custody of the archives and carries out the administrative work.

The secretary general of the *Court Office* acts as registrar. The necessary assistant secretaries, translators and shorthand writers are appointed and sworn by *each of the jurisdictions wanting their services* (C. J., Art. 13; C. P., Art. 23; R. C., Arts. 15 and 43, par. 2).

ART. 70.—*Action before the International Judicature is moved, according to the cases, by a convention of inquiry, by a compromis or by a writ.*

These acts shall contain the conditions agreed upon by the parties, but these may not infringe the provisions of the present convention; they shall define the facts to be examined (R. C., Arts. 10 and 52; C. P., Art. 28).

ART. 71.—*Of each convention of inquiry and of each compromis a copy is transmitted to the International Court Office, which shall eventually take the necessary executive measures.*

ART. 72.—*The writ, introductory to a lawsuit before the International Court of Justice, may be served at the request of a State in its own name or in the name of one of its citizens, or at the direct request of a citizen of one of the States, either upon another State, or upon a citizen of another State than the State to which the applicant belongs* (C. P., Art. 4).

ART. 73.—*A writ* may also be *served* . . . by persons belonging to *the same or a foreign State,* deriving their rights from and entitled to represent an individual qualified *to serve a writ,* and who have taken part in the proceedings before the national *jurisdiction.* Persons so entitled may *act* separately to the extent of their interest (C. P., Art. 5).

ART. 74.—When, *in the case where citizens of one or more States are parties to a dispute,* the International Court *of Justice* has jurisdiction, the national courts cannot deal with a case in more than two instances. The municipal law of *each of the States* shall decide whether the case may be brought before the International Court *of Justice* after judgment has been given in the first instance or only after an appeal (C. P., Art. 6, par. 1).

ART. 75.—An appeal, *in the case foreseen in the preceding article,* is entered by means of a written declaration made in the national court, which has already dealt with the case, or addressed to the International *Court Office;* in the latter case the appeal may be entered by telegram (C. P., Art. 28, par. 1).

ART. 76.—The period within which the appeal must be entered is fixed at 120 days, counting from the day the decision is delivered or notified (C. P., Art 28, par. 2).

ART. 77.—If the applicant does not enter his appeal within the period laid down in the preceding article, it shall be rejected without discussion.

Provided that if he can show that he was prevented from so doing by circumstances beyond his control, and that the appeal was entered within sixty days after such circumstances have ceased to operate, the

Court may, after hearing the respondent, grant relief from the effect of the above provision (C. P., Art. 31).

ART. 78.—If the appeal has been entered in time, a certified copy of the notice of appeal is forthwith officially transmitted by the *competent jurisdiction* to the respondent *either directly or through the International Court Office* (C. P., Art. 32).

ART. 79.—If, in addition to the parties who are before the *competent jurisdiction,* there are other parties concerned who are entitled to appeal, or if, in the case referred to in the next article, paragraph 3, the State which has received notice of an appeal has not announced its decision, the *competent jurisdiction,* before dealing with the case, will await the expiry of the period laid down in Article 76 (C. P., Art. 33).

ART. 80.—If the notice of appeal is entered in the national court, such court, without considering the question whether the appeal was entered in due time, will transmit within seven days the record of the case to the International *Court Office.*

If the notice of appeal is sent to the International *Court Office,* this office will immediately inform the national court, when possible, by telegraph. The latter will transmit the record as provided in the preceding paragraph.

When the appeal is brought by an individual, the International *Court Office* will immediately inform by telegraph the appellant's *State,* in order to enable it to avail itself of the right to take the applicant's part or to forbid him to bring the case before the *International Judicature* (C. P., Art. 29).

ART. 81.—*If the States at variance are unable to agree upon a given jurisdictional mode, the most diligent State may notify to the International Court Office which jurisdiction is chosen by it.*

If within sixty days after information of this choice has been given through the International Court Office, the dissenting State does not express its opinion about the proposed jurisdiction, this jurisdiction shall be competent.

If the dissenting State is of opinion that another jurisdiction should be chosen, this interlocutory question shall be referred to the Permanent Judiciary Delegation which shall decide in urgency and in last resort.

ART. 82.—If the party does not appear, despite the fact that he has been duly cited, or if a party fails to comply with some step within the period fixed by the *competent jurisdiction,* the case proceeds without that party, and the *competent jurisdiction* gives judgment in accordance with the material at its disposal (C. P., Art. 40).

ART. 83.—The *competent jurisdiction* determines what language it shall use and the languages the employment of which shall be author-

ized before it (R. C., Art. 11, par. 3, and Art. 61; C. J., Art. 23; C. P., Art. 24, par. 1).

The official language, however, of the national courts which have had cognizance of the case, may always be employed before the *competent jurisdiction* (C. P., Art. 24, par. 2).

ART. 84.—The *States* which are concerned in a case may appoint special agents to act as intermediaries between themselves and the *competent jurisdiction.* They may also engage counsel or advocates to defend their rights and interests (C. P., Art. 25; R. C., Arts. 14 and 62).

ART. 85.—A private person concerned in the case will be represented before the *competent jurisdiction* by an attorney, who must be either an advocate qualified to plead before a Court of Appeal or a High Court of one of the States *signatory to the present convention,* or a lawyer practising before a similar court, or lastly a professor of law at one of the higher teaching centers of those countries (C. P., Art. 26).

ART. 86.—For the service of all notices, in particular on the parties, witnesses, or experts, the *competent jurisdiction* may apply directly to the Government of the State on the territory of which the service is to be carried out. The same principle applies in the case of steps being taken to procure evidence.

Requests for this purpose are to be executed so far as the means at the disposal of the *State* applied to under its municipal law, allow; . . . the fees charged must only comprise the expenses actually incurred.

The *competent jurisdiction* is equally entitled to act through the *State* within the territory of which it is meeting.

Notices to be given to parties in the place where the *International Judicature* sits may be served through the International Court Office (C. P., Art. 27; C. J., Art. 25; R. C., Arts. 24 and 76).

ART. 87.—*When it is necessary to promote an inquiry, the following rules shall be applied; they may be altered or completed by the competent jurisdiction, unless the parties have adopted other rules* (R. C., Arts. 17 and 18).

ART. 88.—Each party communicates to the International *Court Office* and to the other party . . . the list of witnesses . . . whose evidence it wishes to be heard (R. C., Art. 19, par. 2).

ART. 89.—On the inquiry both sides must be heard (R. C., Art. 19, par. 1).

The witnesses . . . are summoned on the request of the parties or by the *competent jurisdiction* of its own motion, and, in every case, through the Government of the State on whose territory they are.

The witnesses are heard in succession and separately in the presence

of the agents and counsel, and in the order fixed by the *competent jurisdiction* (R. C., Art. 25).

ART. 90.—The examination of witnesses is conducted by the president.

The members of the *competent jurisdiction* may, however, put to each witness questions which they consider likely to throw light on and complete his evidence, or elicit information on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the president to put such additional questions to the witness as they think expedient (R. C., Art 26).

ART. 91.—The witness must give his evidence without being allowed to read any written proof. He may, however, be permitted by the president to consult notes or documents if the nature of the facts referred to necessitates their employment (R. C., Art. 27).

ART. 92.—A minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary, which shall be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is required to sign it (R. C., Art. 28).

ART. 93.—The *competent jurisdiction* is entitled, with the assent of the parties, to move temporarily to any place where it considers it may be useful to have recourse to this means of taking evidence, or to send thither one or more of its members. Permission must be obtained from the State on the territory of which evidence has to be taken in this way (R. C., Art. 20).

ART. 94.—Every ascertainment of facts, and every investigation on the spot, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned (R. C., Art. 21).

ART. 95.—The agents *and counsel of each of the parties* are authorized, in the course of or at the close of an inquiry, to present in writing to the *competent jurisdiction* and to the other party such statements, requisitions or summaries of the facts as they consider useful for ascertaining the truth (R. C., Art. 29).

ART. 96.—As a general rule, *international* procedure comprises two distinct phases: written pleadings and *viva voce* discussions.

The written pleadings consist of the communication by respective agents *and counsel* to the members of the *competent jurisdiction* and the opposing party, of cases, counter-cases, and, if necessary, of re-

plies; the parties annex thereto all papers and documents referred to in the cause. This communication shall be made either directly or through the intermediary of the International *Court Office,* in the order and within the time fixed by the *parties or by the competent jurisdiction.*

This time may be extended by mutual agreement between the parties or by the *competent jurisdiction* when the latter considers it necessary for the purpose of reaching a just decision.

A duly certified copy of every document produced by one party must be communicated to the other party.

The discussions consist of the *viva voce* arguments of the parties before the *competent jurisdiction* (R. C., Arts. 63 and 64; C. P., Art. 34; C. J., Art. 24).

ART. 97.—Unless special circumstances arise, the *competent jurisdiction* does not meet until the pleadings are closed (R. C., Art. 65).

ART. 98.—After the close of the pleadings, the *competent jurisdiction* is entitled to exclude from the discussion all fresh papers or documents which one party may wish to submit to it without the consent of the other (R. C., Art. 67).

ART. 99.—The *competent jurisdiction* is free to take into consideration fresh papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In that case, the *competent jurisdiction* has the right to require the production of such papers or documents, but is obliged to make them known to the opposing party (R. C., Art. 68).

ART. 100.—The *competent jurisdiction* may also call upon the agents of the parties to furnish all necessary papers and ask for all necessary explanations. The *competent jurisdiction* takes note of any refusal (R. C., Arts. 22 and 69).

ART. 101.—The agents and counsel of the parties are entitled to raise objections and points. The decisions of the *competent jurisdiction* thereon are final and cannot form the subject of any subsequent discussion (R. C., Art. 71).

ART. 102.—The members of the *competent jurisdiction* are entitled to put questions to the agents and counsel of the parties and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made, by members of the *competent jurisdiction* in the course of the discussions are to be regarded as an expression of opinion by the *competent jurisdiction* as a whole or by its members in particular (R. C., Art. 72).

ART. 103.—*Each acting jurisdiction* is entitled to determine its competency by interpreting *the introductory act in each case* as well as all other acts and documents referred to, and by applying the principles of law (R. C., Art. 73).

ART. 104.—The *competent jurisdiction* is entitled to make rules of

procedure for the conduct of the case, to decide the forms, order, and time in which each party must present its final argument, and to arrange all the formalities required for taking evidence (R. C., Art. 74).

ART. 105.—The parties undertake to supply the *competent jurisdiction,* within the widest limits they may think practicable, with all information required for deciding the dispute (R. C., Arts. 23 and 75).

The agents and counsel of the parties are authorized to present verbally . . . all the arguments they may consider expedient in support of their case (R. C., Art. 70).

ART. 106.—The *competent jurisdiction* may, at any stage of the proceedings, suspend the speeches of counsel, either at the request of one of the parties, or on their own initiative, in order that supplementary evidence may be obtained.

The *competent jurisdiction* may order the supplementary evidence to be taken either in the manner provided by Article 86, or before itself or one or more of its members, provided that this can be done without resort to compulsion or intimidation.

If steps are to be taken for the purpose of obtaining evidence by members of the *competent jurisdiction* outside the territory where it is sitting, the consent of the foreign Government must be obtained (C. P., Art. 35, par. 3, and Art. 36).

ART. 107.—The parties receive notice to attend every stage of the proceedings and receive certified copies of the minutes (C. P., Art. 37).

The *competent jurisdiction* officially notifies to the parties judgments and orders made in their absence (C. P., Art. 41).

ART. 108.—The discussions are under the direction, *according to the competent jurisdiction,* of the umpire, the president or the vice-president, or in case they are absent or cannot act, of the senior member present (C. J., Art. 26; C. P., Art. 38; R. C., Art. 66, par. 1).

They are not public unless it be so decided by the *competent jurisdiction* with the assent of the parties.

They are recorded in minutes drawn up by the secretaries appointed by the *competent jurisdiction.* These minutes are signed *by the presiding member* and by *the registrar* or by one of the secretaries *acting as registrar.* These minutes alone are considered as authentic (R. C., Arts. 31 and 66, pars. 2 and 3; C. P., Art. 39).

ART. 109.—When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case, the president shall declare the discussion closed (R. C., Arts. 32 and 77).

ART. 110.—The *competent jurisdiction* considers its decisions in private and the proceedings remain secret.

All questions are decided by a majority of the members present.

If the number of members is even and equally divided, the vote of the junior member, in the order of precedence laid down in Article 59, paragraph 1, is not counted (C. J., Art. 27; C. P., Art. 43; R. C., Arts. 30 and 78).

ART. 111.—*Each decision* (*award or judgment*) must state the reasons on which it is based. It recites the names of the members taking part in it and also of the assessors, if any, and is signed by the president and by the registrar (C. J., Art. 28; C. P., Art. 44; R. C., Art. 79).

ART 112.—*Each decision* is delivered in *open sitting,* the parties concerned being present or duly summoned to attend; it is officially communicated to the parties (C. P., Art. 45, par. 1; R. C., Arts. 34, 80, and 81).

When this communication has been made, the *competent jurisdiction* transmits, if wanted, to the national court, the record of the case, together with copies of the various decisions arrived at and of the minutes of the proceedings (C. P., Art. 45, par. 2).

ART. 113.—Each party pays its own expenses and an equal share of the costs of the trial. *The competent jurisdiction may however, as a penalty, condemn the party against whom it decides to bear alone the said costs* (R. C., Arts. 36 and 85; C. J., Art. 29; C. P., Art. 46, pars. 1 and 2).

If an appeal is brought by an individual, he will furnish the International Court Office with security to an amount fixed by the *competent jurisdiction,* for the purpose of guaranteeing the eventual fulfilment of the two obligations mentioned in the preceding paragraph. The *competent jurisdiction* is entitled to postpone the opening of the proceedings until the security has been furnished (C. P., Art. 46, par. 3).

ART. 114.—All differences arising between the parties as to the interpretation and execution of *a decision* shall, in default of agreement to the contrary, be submitted to the jurisdiction which *gave the decision* (R. C., Art. 82).

ART. 115.—The parties may, *in the introductory act or in their motion in limine litis,* reserve the right to demand the revision of the *decision.*

In that case and in default of agreement to the contrary, the demand must be addressed to the *jurisdiction* which *gave the decision.* Such demand may only be made on the ground of the discovery of some new fact which is calculated to exercise a decisive influence upon the *decision,* and which, at the time the discussion was closed, was unknown to the *competent jurisdiction* and to the party demanding revision.

Proceedings for revision can only be instituted on a decision of the

competent jurisdiction expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The decision given shall fix the period within which the demand for revision must be made (R. C., Art. 83).

ART. 116.—*The decisions* (*awards or judgments*) are not binding except on the parties to the proceedings.

When there is a question as to the interpretation of a convention of which other States are signatories, the parties to the proceedings shall inform all the signatory *States* in good time. Each of the *States* is entitled to intervene in the proceedings. If one or more avail themselves of the right, the interpretation given by the decision is equally binding on them (R. C., Art. 84).

ART. 117.—*The various jurisdictions are requested* to propose modifications in the provisions of the present Convention concerning procedure. These proposals are *forwarded to the International Permanent Secretaryship to be communicated through it to the International Preparatory Committee* (C. J., Art. 33; C. P., Art. 50).

The States, though they adopt the rules of procedure contained in the preceding articles with a view of encouraging the development of recourse to the International Judicature, reserve to agree on other rules (R. C., Art. 51).

FIFTH TITLE

General Provisions

ART. 118.—*The International Court Office is placed under the control of the Permanent Administrative Council which appoints its officers and employees, determines its annual budget and formulates its organic regulations* (R. C., Art. 49; C. J., Art. 12; C. P., Art. 22).

ART. 119.—*The cost of the International Court Office and the indemnities granted to the acting and deputy judges of the International Court of Justice shall be paid through the International Treasury.*

The Permanent Administrative Council shall take care that these expenses are entered in the International Budget (R. C., Art. 50; C. P., Art. 47; C. J., Art. 31).

ART. 120.—*A Permanent Judicial Delegation is instituted, formed of three acting and three deputy judges chosen annually from and by the International Court of Justice.* They are eligible for re-election. The election is by ballot. The persons who secure the largest number of votes are considered elected. The Delegation elects its own presi-

dent who, in default of a majority, is appointed by lot (C. J., Art. 6, par. 1; C. P., Art. 48) [M. C., Art. 55].

ART. 121.—The Delegation can:

1. Decide cases of arbitration referred to it if the parties agree upon the application of a summary procedure.

2. Hold an inquiry, under and in accordance with the First Title, Chapter Two, of the present Convention, in so far as such an inquiry is intrusted to the Delegation by the joint accord of the parties. With the assent of the parties, and as an exception to Article 61, paragraph 1, the members of the delegation who have taken part in the inquiry may sit as judges, if the case in dispute is submitted to the arbitrament of the Court or of the Delegation itself (C. J., Art. 18).

3. *Determine the competent jurisdiction in case two or more States disagree upon it.*

ART. 122.—The Delegation can also settle the compromis referred to in Article 52 *of the present Convention* if the parties are agreed to have recourse to the Court for the purpose. It can also do so, even if the request is made by only one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed in the case of disputes referred to in Article 53, paragraphs 3 and 4.

Each of the parties concerned may nominate a judge of the Court to take part, with power to vote, in the examination of the case submitted to the Delegation. If the Delegation acts as a Commission of Inquiry, this task may be intrusted to persons other than the judges of the Court. The traveling expenses and remuneration to be given to the said persons are fixed and borne by the *States* appointing them (C. J., Art. 20).

ART. 123.—The provisions of Articles 70 to 117 are applicable, so far as may be, to the procedure before the Delegation.

When the right of adding a member to the Delegation has been exercised by one of the parties only, the vote of the additional member is not recorded if the votes are equally divided (C. J., Art. 30).

ART. 124.—*The Delegation decides upon the admissibility or refusal of appeals against decisions of national tribunals, when those appeals are entered by private persons and the State to which the applicants belong do not take their part.*

ART. 125.—A report of the work of the Court shall be drawn up every year by the Delegation. This report shall be forwarded to the *States* through the *Permanent Administrative Council.* It shall also be communicated to the acting and deputy judges of the Court (C. J., Art. 15).

ART. 126.—*The International Court of Justice shall meet each year*

in general assembly to deliberate on improvements to be introduced in the International Judiciary Organization. The propositions drafted by it shall be transmitted, through the Permanent International Secretaryship, to the International Preparatory Committee to be submitted by it to the next Conference of States (C. J., Art. 33; C. P., Art. 50) [M. C., Art. 56].

ART. 127.—*The functions of judge of the International Court of Justice and those of clerk of the International Court Office are incompatible with any national functions whatever.*

The persons appointed to these functions are denationalized during their incumbency and are placed under the collective safeguard of the States. As to the preservation of their civil rights they may, however, appeal to the legislation of their native country [M. C., Art. 64].

Members of the amicable and arbitral jurisdictions, during the continuance of their mandate, enjoy the privilege of exterritoriality (R. C., Art. 46, par. 4; C. J., Art. 5, par. 1; C. P., Art. 13, par. 1) [M. C., Art. 65].

II

SANCTION, COERCION AND DEFENSE

EXPLANATORY NOTE

1. Ideas seem to crystallize more and more around the necessity of having some organized force intended to secure respect for international law. But it is obvious that a trespass against international law by a human community is by no means to be assimilated with a trespass against national law by a single offender, a gang of burglars or a crowd of rebels. It is easily understood that, in these various cases, a police force is sufficient to preserve submission to law.

But very dissimilar is the case when a whole people, armed with the terrible and innumerable means of destruction actually at the disposal of the States, infringes international law and openly and boldly violates its prescriptions. To speak still of police force, of international police, seems truly somewhat venturesome.

The question, in our opinion, ought to be considered from a quite different point of view. You cannot really punish and amend a human community; what is to be attained is to put an end to an unbearable disturbance, to constrain those who have placed themselves outside of and above law to yield to it again. What alone could be admitted is that the constraint exerted should tend, like every policial measure, to restore legal order. But any further assimilation seems to us inadmissible. Indeed, it is impossible to sentence to death or to send to prison a whole human community, composed of millions of beings, guilty and nonguilty, among whom are children, old men and wives, and, doubtless, also adult men who do not support their government in its infringement of international law. And then there is to be taken into account the psychology of the crowds and of the

processes used and abused by autocratic governments to intoxicate the peoples.

We have tried, in consequence, to find an adequate terminology, and think that the words *means of constraint* express exactly the goal we are aiming at.

2. People appear to be more and more convinced that the mere use of armed force is not indispensable and that other means exist able to exert an action as wholesome, less cruel but as effective. This conviction, which we share, has induced us to subdivide the means of constraint into *direct* means of constraint and *indirect* means of constraint. The first are the armies and the navies; the second are the breaking off of the multiple international relations actually existing between peoples, diplomatic, commercial, financial, postal, telegraphic, telephonic, the embargo on ships and merchandise, the refusal to receive the allegiants of a State in fault or in rebellion against international law, their expulsion from the territories of other States, or any other means which does not imply recourse to warlike acts.

In the project we have drafted we have not, however, given special definitions of the various enumerated means of constraint. For most of them such a definition is not necessary, for many times use was made of them either by one State alone or by several States acting in concert. It is obvious nevertheless that it will be useful for the States to adopt some common rules about the breaking off of commercial and financial relations, about disposing of seized merchandise and interned ships, about vessels on the sea and the freight in their hulls: it is, in fact, the whole matter of prize which ought to be submitted to a careful revision and reconsidered from an entirely new point of view. The closing of ports and frontiers to the allegiants of the State placed in quarantine, as well as the partial or complete expulsion of those allegiants from the various countries, should also be ruled upon in conventional provisions. But the solution of these difficulties is not extremely pressing and we deemed that their inclusion in the convention we have prepared would uselessly complicate it and obscure the main questions to be considered. The main questions, indeed, are in our opinion the constitution of the

armed forces on land and on sea, as well as the carrying out of the various means of constraint.

3. About the constitution of the armed forces on land, an understanding could be easily reached, if it is true that the peoples accepted to stand the tremendous charges which bear upon them only because such charges had a defensive aim. We do not say that their governments have shared this opinion or have not yielded to other preoccupations and to other influences; but they could only obtain popular acquiescence to their policies of immense armaments by appealing to the necessities of national defense. After the present war the peoples will have, we hope, something to say when new military expenses are asked for, and they will require that the defensive character of armies should be respected and strengthened.

Armies of militiamen alone have such a defensive character, being essentially composed of citizens and not of mercenaries and professional soldiers. Switzerland has rendered that invaluable service to mankind of developing this military régime in its smallest details; a concerted action of the States would bring about its application everywhere and give evidence of the fairness of their purposes. The universal adoption of this régime would reduce to a minimum the noxiousness of the militaristic spirit, maintaining nevertheless at a maximum the defensive power of the States. We think, of course, that the question of universal disarmament is insoluble at this time, unless some unlikely and unexpected events arise. The only reasonable thing to be urged is to reduce, to an amount as low as possible, the forces under arms in normal times; such a reduction will undoubtedly be forced upon the exhausted belligerents and the neutral States will be quite willing to follow their example. These considerations mainly commanded the provisions we drafted.[1]

4. As for the forces on sea it seems to us that a more radical and bolder solution is wanted. In the conception which trans-

[1] It seems interesting to quote here an extract of the message sent lately by President Woodrow Wilson to the Congress of the United States of America, in which he supported the principle we advocate here: "We

forms all the forces on land into defensive forces there is no more place for national navies. Such navies would be considered, as in the past, as an unbearable menace, for it is impossible to give to them a defensive character. The actual navies may lose their aggressiveness only by consolidating them in an international navy, common to all the States, whether previously possessing a fleet or not. By forming with the warships actually in use squadrons without nationality and scattering them all over the earth, any danger of predominance and maritime domination would disappear. It is obvious that the powers intrusted to the various national admiralties would be handed over to an international body, whose members are to be appointed by all the States.

5. The next problem which required our attention relates to war implements. What kind of implements will be used and who shall control their fabrication? Many persons, even before the actual conflict, asked that the factories which produce material and munitions of war should be taken possession of by the States, on whose territories they are located. But such a dispossession would give no assurance concerning the use the various States should make of the factories placed at their disposal. It is likely that some governments would take advantage of it in order to hoard up means of destruction which would constitute a true menace for the other States. It is important, therefore, that the manufacture of war implements should be intrusted to an international body and this solution is ours: all factories and dockyards shall be placed under its high direction.

regard war merely as a means of asserting the rights of the people against aggression. And we are as fiercely jealous of coercive or dictatorial power within our own nation as of aggression from without. We will not maintain a standing army except for uses which are as necessary in time of peace as in time of war; and we shall always see to it that our military peace establishment is no larger than is actually and continually needed for the uses of days in which no enemies move against us. But we do believe in a body of free citizens ready and sufficient to take care of themselves and of the governments which they have set up to serve them. In our constitutions themselves we have commanded that 'the right of the people to keep and bear arms shall not be infringed,' and our confidence has been that our safety in times of danger would lie in the rising of the nation to take care of itself, as the farmers rose at Lexington."

Moreover, universal public opinion has energetically urged that the air and the sea should be definitively cleared of the hateful murdering tools whose victims were mainly unarmed civilians, women and children. A special provision is devoted in our project to the pledge to be subscribed by the States not to use in the future, as means of constraint, flying-machines, balloons, floating or anchored mines, torpedoes and submarines. We have added to this enumeration suffocating, poisonous or inflammable gases and inflammable liquids, whose application has been the cause of unendurable sufferings without producing appreciable military results.

Finally, we think that the States will easily give up the building of fortresses in the future, since renewed experiments show their costly uselessness.

6. But the most delicate question remains to be solved: how shall the various means of constraint be carried out? Those who have tried to find a satisfactory solution have thought that some kind of international executive would be necessary and have not concealed the difficulty of persuading the States to admit such a novelty. But if a more accurate study is made of the various circumstances in which recourse to means of constraint is to be taken, it will be ascertained that, to carry them out, interference of a supranational governmental authority is in no wise wanted. It is important, indeed, to distinguish between the various cases in which recourse to an international constraint may become necessary.

The cases in which such recourse is likely to be exerted are either cases of inexecution of a convention or of a judiciary decision, or acts of aggression. The convention or the judiciary decision may or not have provided the means of constraint to be applied in case of failure of execution. In the affirmative case, it will be sufficient for the State or States concerned to obtain an executory decree, and we deem that the International Judiciary Delegation is quite naturally competent for its deliverance. In the negative case, we propose that the International Court of Justice should be requested to decide urgently which means of constraint is to be applied.

As for acts of aggression, they may be contemplative or effective. In both cases we are of the opinion that the recourse to means of constraint should be an automatic one: the war machinery of the States should in fact be set in motion by order of the aggressive State. We think, however, that a discrimination ought to be made between contemplative acts and perpetrated aggression; an appeal to reason may induce the rebellious State to renounce its warlike intentions, and to this end we have included in our project the recourse to a collective interpellation. It is obvious that this interpellation ought to be drafted in as friendly a tone as possible and should contain suggestions about the manner in which satisfaction could be given to the perhaps righteous grievances of the aggressive State.

What we have said above shows clearly that, in no one of the hypotheses foreseen, the intervention of an international executive is needful, and we think that this ascertainment is likely to discredit the most serious objection to be made against a coercive organization of the Society of States.

7. But if an international executive seems unnecessary, it will, however, be indispensable to create a high military and naval committee intrusted with the co-ordination of the various national forces and the organization and direction of the international fleet. Evidently such a body will have only a technical mission and fulfill the task which a collective war council has several times done in international conflicts, when armies and navies of various States were compelled to act together. This task will, of course, be a very important one and problems of an unusual amplitude will have to be solved, but we are convinced that the choice which will be made of the most prominent naval and military personalities will enable the committee to accomplish its delicate mission.

In our project we have given only a summary sketch of the organization of the International naval and military Committee. The Conference of States will have to consider whether it would be necessary to enter into further details or to intrust to the members of the new organism the task of ruling its activities.

One of the most important provisions included in our project

is that which stipulates that the military establishments of the various States shall be accessible at all times to the members of the International naval and military Committee as well as to the representatives of the States. The main characteristic of the new organization of the world ought to be the most complete good faith in international relations; what could be called the mechanics of the States ought to lie open to everybody's knowledge and the naval and military machinery more completely than any other. The peoples ought to give to one another this token of mutual fairness without which the worst suspicions would continue to make any sincere and lasting adjustment impossible between them.

Complementary Convention on Means of Constraint in International Relations

PRELIMINARY TITLE

ART. 1.—No State has the right to have recourse to force without the consent and the co-operation of the other States, and only as a sanction or a judicial coercion [M. C., Art. 22].

ART. 2.—A State which is attacked, outside of the conditions conventionally and collectively established by the States, has a right of legitimate defense. The other States are obliged to participate in this defense and to make it efficacious [M. C., Art. 23].

ART. 3.—The States shall not have recourse to force as a means of sanction, coercion or defense before having exhausted all moral, political and economic means of constraint [M. C., Art. 24].

FIRST TITLE

Means of Direct Constraint

ART. 4.—Means of direct constraint are the national armies of the various States and the international navy.

Chapter I

ARMIES

ART. 5.—The armaments of the various States have a merely defensive character.

ART. 6.—Armed forces in normal times shall be limited to what is requisite for the maintenance of public order within each State. They may not in any case exceed the proportion of one armed man to each thousand inhabitants. They may be formed only of militiamen willing to remain under arms during one year. No enlistment shall be made for a longer term.

ART. 7.—The States pledge themselves to adopt for their land forces the system of militia with short term. Service in the infantry shall not exceed 90 days, in the artillery 270 days.

Only the officers of higher rank than commandant shall be career-officers.

ART. 8.—The States may organize general maneuvers each year. These maneuvers, however, shall include only militiamen of the three last levies; they shall last no more than fifteen days and take place only at a distance of ten kilometres from the frontier of an adjoining State.

ART. 9.—Militiamen may be recalled during the second year of military service for 30 days, during the third year for 15 days, and during the fourth year for one week. The citizens may afterward, in the locality they inhabit, during the first period of their service, be called to perform practice which may not amount to more than five days a year.

ART. 10.—The military service shall consist of not more than three periods running respectively for each militiaman, from 20 to 30 years of age, from 31 to 35, and from 36 to 40. The militiamen of the first class only shall be summoned to take part in a measure of direct constraint.

Chapter II

NAVY

ART. 11.—The ironclads and warships, now in use and owned by the various States, shall be considered henceforth as forming the international fleet. They shall be divided into squadrons composed each of —— and located in the ports of ——.

ART. 12.—Each squadron shall be under the command of an admiral of a different nationality than that of the State in one of the ports of which it may be located. The vice-admiral shall be of the nationality of this State and the crews shall be formed of seamen of various nationalities in as equal proportions as possible.

ART. 13.—To meet the needs of the international fleet, dockyards shall be maintained at the common expense of the States at ——. There shall also be established international maritime stations open to ships of all nationalities without discrimination. The dockyards are

placed under the direction of the International Naval and Military Committee which shall further determine the location of the stations and the nature and quantity of the products they will have to keep at the disposal of the persons concerned.

Chapter III

ARMAMENTS

ART. 14.—The manufacture of arms, engines and munitions of war needed by the defensive forces of the States shall be realized under the direction and the control of the International Naval and Military Committee.

ART. 15.—The International naval and military Committee shall determine the proportional supply of arms, engines and munitions of war which each State may hoard up.

ART. 16.—The factories of arms, engines and munitions of war as well as the dockyards building ironclads and any other warships shall be taken possession of by the States on the territory of which they are located.

ART. 17.—They shall be indiscriminately placed at the disposition of the International Naval and Military Committee which shall determine which of these concerns it will be needful to maintain.

ART. 18.—The said dispossession shall take place in the course of the six months following the signature of the present convention. The implements of the factories and dockyards, in so far as they cannot be maintained in compliance with the terms of the preceding article, shall be destroyed if it is impossible to make another use of them.

ART. 19.—All fortresses whatsoever now in use shall be dismantled and the States pledge themselves to build no more new ones.

ART. 20.—The States pledge themselves to use no more any kind of:

1. Armed flying-machines or balloons except as scouts or estafettes;
2. Submerged or floating or anchored mines, torpedoes or other submarine engines and vessels;
3. Suffocating, poisonous, or inflammable gases and inflammable liquids or any other products able to cause unnecessary suffering.

ART. 21.—No field work whatever shall be performed at less than ten kilometres from the frontier of another State. No troops shall be located or own camps or barracks in that part of the territory which shall be considered as perpetually neutralized.

Chapter IV

DIRECTION

ART. 22.—An International Naval and Military Committee assumes the high technical direction of the international fleet as well as of the national armies intended to co-operate in the collective measures of constraint and defense. Its seat is at Brussels.

ART. 23.—Each State may appoint two of the members of the International Naval and Military Committee. These members are chosen from the army and navy officers of high rank and in preference from the youngest among them.

ART. 24.—The International Naval and Military Committee is subdivided into commissions corresponding to the various usual services of armies and fleets. These commissions shall elaborate the regulations intended to secure the co-ordination of the services of the various defensive forces of the States as well as the organization and the maintenance of the international fleet.

The instantaneous mobilization of the national armies and of the international fleet shall be made the object of special measures.

ART. 25.—The International Naval and Military Committee formulates its organic bylaws. It elects from its members a Permanent Bureau composed of a president, of as many vice-presidents and secretaries as there are commissions appointed and of two general secretaries. No State may be represented by more than two members in the Permanent Bureau. The members of the Permanent Bureau are elected for ten years; they are re-eligible.

ART. 26.—The Permanent Bureau carries into execution the decisions of the International Naval and Military Committee. It appoints the personnel necessary to the fulfilment of its task. It has under its immediate direction the whole of the central administrative direction of the forces of constraint and defense.

ART. 27.—The members of the International Naval and Military Committee shall receive traveling and staying indemnities. An annual remuneration of —— francs is given to the president of the Permanent Bureau, of —— francs to each of the vice-presidents, and of —— francs to each of the general secretaries. The remuneration of the secretaries is rated at —— francs.

The expenses incurred thereby as well as those needed by the central military and naval organization shall be embodied in the International Budget. An account of these expenses shall be prepared by the Permanent Bureau to be transmitted by it to the International Financial Committee.

SECOND TITLE

Means of Indirect Constraint

ART. 28.—The indirect means of constraint are the breaking off of diplomatic relations, of postal, telegraphic and telephonic relations, of commercial and financial relations, the refusal to receive the allegiants of the faulty State and their expulsion from the territories of the other States, or all other means agreed upon by the States.

ART. 29.—These means may be cumulated and their application, partial or total, successive or concomitant, shall be ordered, according to the case, at the request of one or another of the parties concerned, by the International Court of Justice or by the Permanent Judiciary Delegation.

THIRD TITLE

Execution of the Means of Constraint

ART. 30.—When a State refuses to fulfill one of its obligations agreed upon in compliance with an international convention or to carry out a decision delivered against it by one of the international jurisdictions, the International Court of Justice shall be requested by the State which has, or jointly or separately by the States which have, to suffer from the attitude taken by the faulty State.

The recourse shall be lodged at the International Court Office or transmitted there, in case of urgency, by the most rapid way. The recourse shall be considered in plenary sitting, all other business being suspended, and the decision is notified at once by the most rapid way to all the States pledged to carry into effect the means of constraint.

ART. 31.—If the convention or the decision invoked has mentioned the means of constraint to be eventually applied, the recourse shall be to the Permanent Judiciary Delegation which shall immediately notify an executory decree to all the States pledged to carry it into effect. This decree shall be transmitted by the most rapid way.

ART. 32.—The facts of a State mobilizing its army without being requested to do so by the Permanent Naval and Military Bureau, or of manufacturing arms, engines or munitions of war or having them manufactured, or of building fortresses or other works, or of carrying out any other act contrary to the provisions of the present convention, shall be considered as an aggression and shall vindicate the recourse by the other States to means of direct constraint.

ART. 33.—Before exerting this constraint, the faulty State shall be

called upon by at least three States acting together and asked, in case of denial, to give to the representatives of the other States free access to its military establishments. Its refusal or silence shall be considered as a declaration of war.

ART. 34.—The fact of a State carrying out an armed attack against another State of itself vindicates the recourse to means of direct constraint by the other State.

The armed attack is ascertained, either by the declaration of war made by the aggressive State, or from the fact that its troops entered the neutralized zone of its own territory adjoining the frontiers of the attacked State or the territory of this State.

ART. 35.—The Permanent Naval and Military Bureau, in the cases foreseen in Articles 32 to 34, shall immediately forward an order of mobilization to all the States intended to take part in the carrying out of the means of direct constraint.

ART. 36.—The fact of ordering this mobilization implies the immediate application of the means of indirect constraint which may not already have been used against the aggressive State.

ART. 37.—The use of armed force, as a means of direct constraint, shall be considered only, by the States applying it, as a police measure taken with regret and unwillingly. They shall make use of it as humanely as possible.

If, however, the aggressive or faulty State should deem it its right to make use of especially cruel devices, particularly toward the civil populations, or of devices prohibited by the present convention, it would be, by a formal and collective declaration of the other States, branded as an outcast to mankind and the most effective and energetic measures of crushing its armed forces could be used against it.

FOURTH TITLE

General Provisions

ART. 38.—The expenses resulting from the maintenance of the national armies remain at the charge of each of the States.

The expenses resulting from the maintenance of the international fleet shall be subdivided between the States on the basis of the tonnage of their merchant marine multiplied by the total amount of their population. The States without merchant marine shall share in these expenses proportionately to their population by taking as a basis the quota paid by the State having the smallest merchant marine.

ART. 39.—The expenses resulting from the application of a direct

constraint shall be subdivided between the States in the proportion established for the expenses of the international fleet. In these expenses shall be included the indemnities granted to families in consideration of the death or invalidity of one or more of their members or of the material losses incurred in consequence of the military operations.

ART. 40.—When the recourse to one of the means of indirect constraint has for certain States consequences inadequate to their resources, an apportionment shall be made of the damages inflicted on the basis pointed out in the preceding articles and through one of the international jurisdictions.

ART. 41.—The military establishments of all the States are all without exception accessible to the members of the International Naval and Military Committee as well as to the civil and military representatives of the other States.

ART. 42.—The destruction of the implements of the factories and dockyards, prescribed by Article 18, and that of all the warships, which are not or can not be utilized, shall take place within a delay which shall not exceed one year from the date of the present convention. This shall be realized in the presence of the delegates of the International Naval and Military Committee and a record thereof shall be drawn up in triplicate, of which one copy shall be delivered to the representatives of the State on whose territory such demolition shall have been effected, one deposited at the seat of the International Naval and Military Committee and one at the seat of the International Permanent Secretaryship.

III

EMIGRATION, IMMIGRATION AND NATIONALIZATION

EXPLANATORY NOTE

1. The problems concerning the contemporary migration of men will become without any doubt exceptionally important during the years which will follow the settlement of the actual war. It is practically certain that the most destitute among the European masses will try to find more favorable living conditions in the new countries free from the financial burdens which will overwhelm the peoples now involved in the struggle. Eventual measures of defense will be taken by the States which will be threatened with an undesirable invasion; and yet how unfortunate it would be to see the most progressive and democratic communities oppose the principle, tacitly consented to in fact, of the unrestricted circulation of men. It will, therefore, be of the highest importance that the States all over the world should agree on the most essential rules which should prevail in these matters.

In the complementary convention we have framed we have endeavored to codify two kinds of provisions, those more directly in connection with the movement of men from one land to another and those relating to the assimilation of the newcomers by naturalization.

2. If one considers as a whole the migration of men during modern times, it is obvious that, out of two vast reservoirs of human beings, Europe and Asia, the other continents, America, Africa and Australasia, were flooded by multitudes of individuals anxious to escape from deplorable political, moral and economic conditions. One of these continents, in particular, was looked at by the emigrants as the land of promise, and it is toward the

United States of America that their most considerable numbers proceeded and proceed. We believe that we could not do better than to be inspired by the difficulties experienced by the American Republic in dealing with the reception and handling of these heterogeneous throngs. These difficulties, indeed, were numerous and considerable. If we take the number of persons landed in North America during the last sixty years, we notice that from a minimum of 72,183 in 1862 their number increased to 1,285,349 in 1907 and would have reached a higher figure in 1914, for during that year, notwithstanding the outbreak of the war, 1,213,480 persons came to the United States. It may be asserted that the experience undergone by this country is a decisive one.

3. It is especially against the undesirables that American measures have been taken. Rightly the United States has declined to admit individuals who are true human derelicts; they are of the opinion that those derelicts are the result of the wretched social conditions which prevail in some countries. Those countries must bear the consequences of the negligence and the indifference of which they are guilty toward a great many of their people. It would be intolerable if they tried, to the detriment of newer countries, to get rid of their less commendable elements.

We have inserted in the third article of our project the enumeration contained in the American law. We consider, however, that some distinction should be made between the various categories of undesirables. We think especially that the abnormal and insane cannot be considered as a real danger if they are accompanied by members of their family able to take care of them or if they come to meet some of those members. Absolutely to oppose their admission would sometimes mean true cruelty toward them, and their near relatives would be obliged to leave them in mercenary hands or to intrust them to public charities. Appeal may be made to similar considerations in behalf of infected patients who are not necessarily incurable and whom it would often be sufficient to submit to a temporary isolation.

We have also taken up, in the sixth article of our project, the provision which denies admission to children under sixteen years of age, of whom some families would disembarrass themselves by

sending them afar, as well as to workingmen brought in by contract at the initiative of manufacturers anxious to exert a pressure on the labor market.

As for illiterates, whom the American Congress attempted twice to repel, we rallied to the views of Messrs. Cleveland and Taft who both opposed this measure by their presidential veto. They were of the opinion that illiterates are mostly the victims of a defective educational organization in their country of extraction and that it would be unfair to deny them the opportunity of learning; illiteracy does not mean necessarily intellectual inferiority. We think, however, that the States ought to have the right to compel illiterates to acquire some education within a given time, if they are of an age to go profitably through a course of study.

4. There is no doubt that theoretically the States should have the right to oppose a systematic invasion of their territory by emigrants of a given origin, and determined to impose their political or social conceptions upon the invaded community, or to form in its midst ethnical groups purposely differentiated and imbued with particularist feelings.

The fear of such an invasion, by crowds of Chinese and Japanese extraction, has incited the American people to adopt exceptional and not over-justiciable measures.[1] It was understood at last, of course outside the regions directly threatened, that legislation against definite emigrants for racial reasons alone is not tolerable; every measure of this kind ought to assume a general character and to be applied without discrimination to newcomers of any origin.

It is on this principle that we have based the provision contained in our project. This provision is eminently optional and the States remain free as before to open largely their frontiers to all those who wish to come and to find a shelter behind them. But as soon as the States decide on restricting immigration, the restriction ought to be general and proportional at once to their

[1] To value the exact importance of this fear, it may suffice to remind that from 1905 to 1914, out of 10,121,940 immigrants, 16,391 were Chinese and 106,569 Japanese, or 1.2 per cent. of the entire immigration.

native and naturalized population and to the number of persons originating from the various emigratory countries. To give a positive basis to this last apportionment we propose to make it proportional to the number of emigrants of every origin entered into the immigratory country during the last ten years.[2]

It is further in the well understood interest not alone of the immigratory countries but of the emigrants themselves to be scattered over the territory of those countries as usefully as pos-

[2] We deem it interesting to show the results which would be obtained by a reduction, to 1 per cent. of the whole population, of the American immigration. We have taken as a basis the years 1905 to 1914 because the decrease observed in 1915 (from one million about to 326,700) would have modified the elements of the question to be solved. We have further admitted that the actual total population of the United States of America amounts to about one hundred millions. The statistics we use are classified according to the racial origin of the immigrants, but this is of lesser importance from the point of view we have adopted.

In the following table, the first row of figures indicates the total number of immigrants of each kind entered during the years 1905 to 1914 and the second row the maximum number of immigrants which it would be possible to admit in the case of a reduction to 1 per cent.

Africans (negroes)	55,079	544
Armenians	43,784	433
Bohemians and Moravians	102,426	1,012
Bulgarians, Serbians, Montenegrins	129,185	1,276
Chinese	16,391	162
Croatians, Slovenians	330,548	3,265
Cubans	42,066	416
Dalmatians, Bosniaks, Herzegovinians	42,887	424
Dutch, Flemish	113,222	1,119
Hindus	6,359	63
English	502,860	4,969
Finns	122,158	1,207
French	159,861	1,579
Germans	757,611	7,485
Greeks	322,871	3,189
Hebrews	1,089,237	10,762
Irish	385,014	3,804
Italians (North)	362,501	3,581
Italians (South)	1,916,576	18,935
Japanese	106,569	1,053
Koreans	5,408	52
Lithuanians	187,769	1,855
Magyars	349,489	3,452

sible. The concentration of populations of the same origin in localities closed in fact to emigrants of other nationalities postpones their assimilation and also the amalgamation of the various races, so necessary to the formation of a collective spirit, more human, more cosmopolitan and more international than in the older countries, given over to the worst suggestions of an acute and sickening nationalism.

The hope of the world is in such an adaptation of the greatest number possible of men to the new conditions of a unified humanity. It was often proclaimed that the United States of America is the great melting-pot where the fusion of the races is performed. Unfortunately the awakening, in this country, of nationalistic antagonisms, caused by the great war, shows how unstable still is the amalgamation. But a salutary reaction becomes manifest and it is obvious that a huge majority of the citizens of the United States of America are conscious of the danger which would imperil the American union if the work of assimilation should not be resumed and energetically pursued, not alone in the interest of this great democracy but for the salvation of the peoples in general.

Drastic and perhaps somewhat childish measures have been suggested, such as the compulsory use of an official language, the obligation to Americanize Christian and family names. We are

Poles	1,063,954	10,512
Mexicans	104,320	1,033
Portuguese	82,389	814
Rumanians	121,473	1,200
Russians	208,518	2,060
Ruthenians	217,891	2,152
Scandinavians	445,922	4,406
Scotch	197,403	1,950
Slovaks	303,551	2,998
Spanish	75,073	741
Spanish Americans	12,558	124
Syrians	61,233	605
Turks	17,472	172
Welsh	23,964	236
Occidental Indians, Cubans excepted	12,529	124
Others	23,819	236
	10,121,940	100,000

of the opinion that the faculty given to the States to distribute emigrants according to their aptitudes as equally as possible on their territory instead of letting them settle by chance and crowd certain cities, constitutes the most effective measure for inducing foreigners of various extractions to come into contact with one another and of compelling them, without constraint, to use a common language.

This measure will be completed by the faculty granted to the States to impose naturalization upon aliens whose protracted residence gives evidence of their determination to remain for ever. Perhaps the duty imposed upon the citizens of taking part in the political life of the country by the institution of compulsory voting would constitute a fortunate aid to this end.

5. The faculty given to the States to force aliens to be naturalized, after a settlement of some length, does not, however, solve all the difficulties resulting from the dissimilarity of national legislations in the matter of change of nationality. It is necessary that the principle that each man ought to have a nationality but should have only one nationality should finally be enforced. Actually many persons are without nationality or have a dual nationality. The first ones are those whom the States denationalize when they have sojourned abroad during some years, although they have not acquired any new nationality. The second ones are those whom some States (mostly for military reasons) continue to consider as their allegiants, although they have acquired a new nationality.

It is, therefore, of the highest importance that the States should agree not to break the allegiance of persons of the first category without their express acquiescence and accept willingly the breach of allegiance affected by their citizens who are anxious to become allegiants of another State. In the convention drafted by us, we have devoted to this subject Articles 13, 14, 16 and 17, the text of which is self-explanatory without further commentary.

We have also set down the conditions under which compulsory naturalization could be realized. The delay of five years proposed by us is generally admitted as justifying the loss of na-

tionality; it is considered as a tacit renunciation, by a person of foreign nationality, of his presumed intention to return to his country of extraction. We thought, however, that the possibility should be given to the alien resident to manifest his true intention; but a mere declaration cannot be considered as enough, however often it may have been renewed; it ought to become effective and not to remain platonic; it would, indeed, be too easy for any emigrant to continue to profit by the advantages he enjoys in the new country where he has settled and at the same time to escape not only from the responsibilities and the burdens imposed upon the citizens of that country, but also from those borne by his fellow-citizens in his country of extraction.

6. The convention which the States should sign would not be complete if it did not try to solve a controversy, which divides the jurists, concerning the nationality of the members of the family of an alien, who has or has not become a citizen of the country where he settled. The problem has in fact a double aspect. Is naturalization personal or familial? In conferring nationality ought the *jus sanguinis* or the *jus soli* to prevail? We are of the opinion that the principle of familial unity should predominate as well in the matter of naturalization as in the matter of nationality: the wife and minor children will consequently follow the nationality of husband and father.

A double attenuation should, however, be admitted in the application of the principle proclaimed by us. Firstly, a widow and children who are of age ought to have the right to recover their previous nationality without being obliged to fulfill the often very complicated formalities of a regular naturalization. Secondly, it seems just that the *jus soli* should be applied to children born of alien parents on a territory on which their parents themselves were born; the reasons to be invoked are similar to those pointed out above to justify compulsory naturalization. The fact that compulsory naturalization will be more and more provided for, in the legislation of most of the States with an intensive immigration, will make the application of the *jus soli* less frequent and bring about its tacit abrogation.

7. The general provisions in our project are devoted to national

and international agencies which should be created by the States in order to exert a benevolent supervision over the emigrants and immigrants and especially to warn them about the difficulties to be overcome and the useless deceptions to be avoided.

Among the aims to be immediately reached, we have especially indicated the unification of formalities and the creation of an International Labor Exchange. Among the measures of protection it will be necessary to generalize those already taken by several governments concerning the transportation of emigrants by land and by sea, their reception at the ports of embarkation and disembarkation, their settlement in the immigratory countries, the deposit and transfer of their savings; it will be necessary also to publish official information on the moral and material conditions of living in the immigratory countries.

As for the creation of an International Institute of Migration its usefulness is not to be doubted.[3] Some governments have already organized colonial institutes. It would, perhaps, be convenient to constitute the International Institute of Migration as a federal body representative of these national institutions. But, in our opinion, it will be better to leave to circumstances the determination of what developments it will be useful to give to the new endeavor. It will be sufficient at the beginning to apply to

[3] It is interesting to state that the American Congress in the law of December 2, 1912, which was vetoed on account of the provision relating to illiterates, introduced an article concerning the international regulation of emigration. This article, forming Sec. 29, is worded as follows:

"That the President of the United States is authorized, in the name of the Government of the United States, to call, in his discretion, an international conference, to assemble at such point as may be agreed upon, or to send special commissioners to any foreign country, for the purpose of regulating by international agreement, subject to the advice of the Senate of the United States, the immigration of aliens to the United States; of providing for the mental, moral and physical examination of such aliens by American consuls or other officers of the United States Government at the ports of embarkation or elsewhere; of securing the assistance of foreign governments in their own territories to prevent the evasion of the laws of the United States governing immigration to the United States; of entering into such international agreement as may be proper to prevent the immigration of aliens who under the law of the United States are or may be excluded from entering the United States and of regulating any matters pertaining to such immigration."

it a régime similar to that which was adopted in behalf of the International Institute of Agriculture and which proved effective.

Complementary Convention on the International Circulation of Men

PRELIMINARY TITLE

ART. 1.—Foreigners enjoy in all States the liberties and rights guaranteed to nationals. The States proclaim that these liberties and rights essentially include individual liberty and security, inviolability of domicil and property, freedom of conscience, freedom of speech, inviolability of correspondence, freedom of association, freedom of religion. Restrictions may, however, be enacted in respect to the enjoyment of certain rights of elective franchise and of eligibility.

ART. 2.—Neither race, nationality, language, nor religious, philosophical or social convictions may be used as a basis on which to exclude or to expel foreigners.

Nevertheless, the States may agree on regulations to be applied to the abnormal or amoral, the insane, infected patients, professional beggars and vagrants, persons who have been convicted and all other categories of undesirable persons.

They will also establish common regulations in matters of change of nationality and may agree upon general measures relating to the annual or absolute number of immigrants admitted to the territory of each State, or to their distribution thereupon.

FIRST TITLE

Emigration and Immigration

ART. 3.—Are considered by the States:

1. As abnormals: idiots, imbeciles, feeble-minded persons, epileptics, as well as persons mentally or physically defective and unable therefore to earn a living.

2. As insane: persons actually in a state of madness, persons who have been insane within the five years previous to their arrival at one of the continental or maritime frontiers of the immigratory State, persons who have had two or more attacks of insanity at any time previously to their arrival.

3. As amorals: persons who give themselves up to prostitution or to

any other immoral purpose, persons coming into another State than their State of extraction or of residence in order to give themselves up to prostitution or to any other immoral purpose, those who encourage directly the introduction of such persons or earn a living out of the products of the prostitution of such persons.

4. As infected patients: persons afflicted with tuberculosis in any form or with any contagious disease such as cholera, typhus, bubonic pest, yellow fever.

Are further considered as undesirable persons: those who have incurred an infamous punishment or are indicted for a crime entailing such a punishment, political acts or misdemeanors excepted; those who by their declarations, acts or writings, have given evidence of their intention to attack by force or violence the official and constitutional institutions of the immigratory State or the representatives or agents thereof; those who follow, or assert that they intend to follow, customs or trades prohibited by the penal law of the immigratory State. However, the citizens of a State where such customs or trades are allowed will not be excluded therefor if they declare that they individually dislike these customs or trades.

ART. 4.—The States shall, however, authorize the immigration of abnormals or insane if they are accompanied by members of their family able to take care of them or if they come to meet some of those members. The States shall have the right to enact legal or administrative rules in order to make inoffensive for the community the presence of those abnormals or insane.

ART. 5.—The States which shall not oppose absolutely the immigration of infected patients may submit them to a régime of isolation as protracted as seems necessary and eventually order their deportation if their recovery is not completed within a given period.

ART. 6.—The States reserve the right to deport: children under sixteen years of age not accompanied by one of their near relations to the fourth degree or coming to meet one of them; workingmen bound by a written, printed, oral or tacit contract to lend their services at a lower salary, for a longer daily or weekly duration or with a higher yield than those normally agreed upon in the immigratory State or fixed by the local or governmental authorities of that State.

ART. 7.—Each State has the right to oblige illiterate emigrants, less than fifty years old, to learn reading, writing and arithmetic within three years from their arrival on its territory. The States which shall have recourse to that measure pledge themselves to give to the immigrants the opportunity of acquiring such a learning. Illiterate emigrants not yielding to this obligation may be deported.

ART. 8.—The States shall secure free admission and free circulation on their respective territories to all persons coming temporarily in order to study institutions and resources, to visit the country as tourists, to enter into contract or into a parley with the inhabitants, or some of them, with a scientific or economic purpose, to deliver courses of lectures or to attain any other similar end. Legitimate wives and the children accompanying them shall be admitted under the same conditions.

If, however, these persons, their wives or their children should decide to become residents, they should eventually be submitted to the restrictive provisions included in the present convention.

ART. 9.—The States mutually acknowledge their right to limit, if they deem it necessary, to a proportional quota of their native and naturalized population, the annual number of emigrants admitted to their territory; this quota, however, shall not go below one per thousand. The last decennial census shall be used as a basis for the calculation of the said quota.

In case such a measure is taken, it shall be applied without discrimination to the emigrants of any origin in a respective proportion equal to that of the number of immigrants of each origin entered into the country of immigration during the ten previous years.

Besides, each State may limit to the twentieth of the total annual quota of admitted immigrants the maximum number of immigrants originating from a given country.

The States also acknowledge their right to limit to the twentieth of their total population the number of immigrants of foreign nationality admitted to their territory.

ART. 10.—The States may adopt prescriptions in order to facilitate the scattering of the new immigrants as equally as possible over the whole of their territory and secure in the largest degree their regular and rapid assimilation.

ART. 11.—The deportation, spoken of in the preceding articles, shall consist essentially in the obligation imposed upon the transportation or navigation companies or services which brought over the deported persons, of taking them back, in similar traveling conditions to those applied when they came, to their countries of origin or former residence.

ART. 12.—Persons who should attempt to go back, openly or clandestinely, within a year to the State of immigration which deported them, without having obtained a special authorization from the competent authorities of that State, are subject to a condemnation which could not exceed a fine of 500 francs or an imprisonment of one month.

SECOND TITLE

Naturalization

ART. 13.—No State may reserve to itself the right to consider as its allegiants for ever nationals who have emigrated.

ART. 14.—Citizenship is considered by the States as given up by their nationals after a five-years' continuous residence abroad, unless they give evidence of a contrary intent by a declaration of allegiance renewed from year to year.

This declaration shall, however, be considered as void if it is not carried into effect before the end of the tenth year, or is not regularly renewed.

ART. 15.—Every State may compel a foreigner, settled on its territory for five years, to become naturalized. It may also, before the end of the fifth year, confer naturalization upon a foreigner settled on its territory who shall have fulfilled the formalities required by law. However, in case a foreigner should have made a declaration of allegiance under the conditions prescribed in the preceding article, his naturalization would take place only after the end of the tenth year.

ART. 16.—The States pledge themselves to consider the naturalization of one of their allegiants as canceling any allegiance for the State with which he was connected by his previous nationality.

ART. 17.—Nationals who have established their domicil or their residence abroad are considered as the allegiants of the State with which they are connected by their previous nationality, and this till the moment they have effected their change of allegiance.

ART. 18.—The wife and minor children follow the nationality of the husband and father. However, a widow, during the year following the death of her husband, and the children, during the year following their majority as established according to their actual nationality, may revert to their former nationality.

ART. 19.—Children born of alien parents may, during the year following their majority as established according to their actual nationality, choose the nationality of the country where they were born, if they have sojourned there for at least ten years.

THIRD TITLE

General Provisions

ART. 20.—The States pledge themselves mutually to oppose, as much as possible, the departure or the transit of undesirable persons as enumerated in Articles 3 and 6 of the present convention.

ART. 21.—Each State shall organize, in accord with the diplomatic and consular body accredited near it, a special office for the supervision of emigrants and immigrants. The various States concerned may appoint officers near each of those offices in order to collaborate with their national officers.

Each State shall see that transportation and navigation companies and services situated on its territory do not deliver tickets to emigrants without immediately advising the officers intrusted with the said supervision. Each State shall fix the delay to be established between the date of deliverance and the date of validity of the said tickets in order to make this supervision efficient.

ART. 22.—Each State may indicate the ports and frontier stations which shall alone be devoted to the service of emigration and immigration.

ART. 23.—An International Institute of Migration is created by the States, composed of delegates chosen from among the members of the national offices for emigration and immigration. States of which the total number of emigrants and immigrants is less than 250,000 shall have the right to appoint one delegate; those of which this number is higher than 250,000, but less than 500,000 may appoint two delegates; those of which this number is higher than 500,000 may appoint three delegates.

ART. 24.—The International Institute of Migration shall have the aim of promoting the adoption, by the above said national offices, of similar executive measures. It shall endeavor to simplify and unify the formulæ used by the administrations of the various States and to create an international identification card. It shall organize also an International Labor Exchange.

THE END

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The figures in parentheses refer to the articles of the *Magnissima Charta* (M. C.) or to the first (I), second (II) and third (III) complementary conventions. The other figures refer to the pages.